

HUGHES & GILL

PROFESSIONAL CORPORATION

Michael J. Hughes
John P. Gill

Michael J. Cochrane
Of Counsel

Amy K. Tinetti
Erica L. Brynes

NEW TOWING LAWS

Effective January 1, 2007, the Vehicle Code provisions which govern the towing of cars from homeowner association property have been changed. The majority of the changes are directed at the towing companies, which now must be more *consumer friendly* to the owners of the cars that they tow away. For example, if the owner of a car that is in the process of being towed away runs after the tow truck driver and tells him to stop, the driver must stop and release control of the vehicle to the owner. There are other requirements that the tow companies must adhere to which have little or no bearing on homeowners associations.

WHEN MAY AN ASSOCIATION TOW

An association can tow cars from property within the boundaries of the association in any one of the following situations:

1. Permanent signs are posted at each entrance to association property (see details below) AND a vehicle is parked in violation of association rules and regulations;

OR

2. A vehicle within the boundaries of the association has been issued an association "parking ticket" and has not been removed for 96 hours (four days);

OR

3. A vehicle is essentially inoperative and lacks a major component required for safe operation on the highways such as a windshield, tires, etc.;

OR

4. A car is illegally parked within 15 feet of a fire hydrant, or in a fire lane or interferes with entrance or exit from association property.

NOTE: It is not necessary to wait 96 hours in every instance before a car can be towed. If the association has posted the proper new signs (see below) at all of its entrances, and the vehicle is in violation of its parking rules, the 96-hour (4-day waiting period) does not apply. The same applies to towing away the inoperative junkers. If all association internal parking rules regarding towing are followed, these vehicles may also be towed away without waiting four days.

THE TOWING PROCESS

While the above sets forth the instances when an association is authorized to have a vehicle towed, the PROCESS for the actual act of towing has changed. **No car may be towed from association property unless:**

1. A written authorization from an employee or agent of the association has been given to the tow company. This authorization must provide:
 - a. The make, model, vehicle identification number and license plate for the car to be towed; AND
 - b. The name, signature, job title, address (residential or business) and telephone number of the association employee or agent; AND
 - c. The grounds for removal of the vehicle; AND
 - d. The time when the vehicle parking violation was observed; AND
 - e. The time that the authorization to tow was given.

(Attached is a form for the authorization to tow which you may wish to use.)

2. The association employee or agent must be present on the association property at the time of the tow.

This does not mean the authorizing individual has to be standing next to the car that is towed. He or she simply has to be somewhere on the association grounds.

3. The association employee or agent must notify the police within one hour of issuing the authorization to tow.

NOTE: The person filling out the authorization does not have to be an association member; a security company employee can act as the agent of the association.

EXCEPTION TO REQUIREMENT OF "WRITTEN AUTHORIZATION"

There is an important exception to the requirement that a specific authorization to tow be issued before towing a vehicle. The Fourth instance under "WHEN MAY AN ASSOCIATION

TOW" (when it is parked within 15 feet of a hydrant, in a fire lane or blocking an entrance or exit from the association), does not require an authorization to tow. INSTEAD, the association may provide its towing company with a "General Authorization to Tow." If such an authorization is given, a tow company may tow any vehicle parked in violation of these three categories without any further involvement of the association. This, of course, assumes that the association has installed the permanent signs at all entrances meeting the new requirements of the law.

NEW SIGN REQUIREMENTS

We recommend that the association immediately have installed in plan view at all entrances to the property signs that meet the following specifications:

1. Not less than 17 inches by 22 inches with lettering not less than one inch in height;
2. State that public parking is prohibited and warning that vehicles in violation will be removed at the owner's expense;
3. State the telephone number of the local police department;
4. State the name and telephone number of each towing company that the association has authorized to tow cars from the premises.

IMPLEMENTATION

The law has set forth a series of penalties for not following all of its terms, including a \$2,500 fine and payment to the owner of four times the amount of the towing and storage charges for a towed vehicle. As a result, this new law is to be taken quite seriously, and association parking policies should be amended to reflect it and scrupulously adhered to. We should assume that the towing companies themselves will also be adopting rules and policies to prevent them from being subject to liability, which can include punishment as a misdemeanor, and it is important that the association and its selected towing companies are in complete agreement as to how each must proceed to follow the new law. The association should attempt to require that the towing company indemnify it for any claims against the association due to action of the towing company, and I would not be surprised if the towing company sought to have the association indemnify it. Therefore, there will be some contractual negotiations that need to take place and those should start soon with towing suspended until all parties are comfortable with the new laws.