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Community Association LawLetter

KNOW BEFORE YOU TOW - MONTGOMERY COUNTY ADOPTS NEW TOWING LAW

Towing from private property in Maryland has come under increased scrutiny in recent years as some towing companies and property owners engaged in "predatory" towing to immediately remove unauthorized vehicles. In response, statewide towing procedures were enacted in 2012 to provide additional protections to vehicle owners. Maryland towing law, for instance, requires signs with specified information and requires a photo of the vehicle before towing.

In some counties and municipalities, towing is also regulated by local laws which impose more stringent procedures. Both state and local towing laws govern towing from the common area parking lots of condominiums, homeowner associations and co-ops.

In Montgomery County, towing has been regulated by County law for many years. However, new restrictions apply to towing from private parking lots beginning November 30, 2015. Requirements which affect towing from community association property include:

- Each tow must be **specifically authorized in writing** in person, by fax or email on a form approved by the County Office of Consumer Protection, except for tows between 2 am and 9 am and tows from a fire lane or vehicles blocking access to another vehicle, the property or building.

- For towing solely for failing to display a valid registration, a violation notice must be placed on the vehicle at least **72 hours before towing.**

- In addition to signs at the entrance, there must be **additional signs** for each 45 spaces. However, if a violation notice is placed on an unauthorized vehicle at least **48 hours before towing**, only an entrance sign is required by County law but the signage must still comply with the State towing law which requires one sign for every 7500 square feet of parking area.

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Know Before You Tow
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- **Photographic evidence** of the violation which is the basis for the tow must be provided to the vehicle owner and must be available for inspection for one year.

- **Towing contracts** must specify the responsibilities of the property owner and towing company, state that the contract does not provide express authorization to tow, provide that the property owner and towing company are jointly liable for violations by the towing company with a right of contribution or indemnification, and include certain other provisions.

With parking spaces in short supply in many communities, parking and towing disputes are often contentious. To help avoid these disputes, condo and HOA boards should carefully review all parking restrictions and contracts, and adopt a written towing policy in coordination with the association manager, attorney and towing contractor.

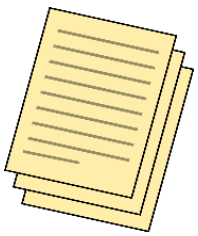
GUIDANCE FOR COMMUNITY MANAGERS AND THE UNAUTHORIZED PRACTICE OF LAW

Community association managers regularly assist condo, co-op and HOA boards in hiring contractors, collecting assessments, adopting community rules and many other tasks necessary to govern a community. Managers must be knowledgeable of a community's declaration, bylaws and other governing documents, as well as variety of state, local and federal laws which impact association governance.

However, managers must be careful not to provide legal opinions or prepare documents which constitute practicing law.

The Florida Supreme Court recently provided guidance on the boundary between activities which may be performed by a community manager and activities which require an attorney. In a May 2015 advisory opinion, the Court commented on numerous specific tasks related to community association governance. Although the Court ruling is directly applicable only in Florida, it is instructive for community association managers in Maryland and the District of Columbia.

The standard applied by the Court is that the practice of law "includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court."



Nearly 20 years ago, the Florida Supreme Court advised regarding the activities which constitute the unlicensed practice of law and are not allowed to be performed by Florida community managers.

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Guidance for Community Managers
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These include:

- drafting assessments liens and lien releases;

- determining the timing, method and form of giving notice of meetings;

- determining the votes necessary for certain actions which require the interpretation of statutes and rules;

- advising about the application of law to a matter being considered; and

- advising that an action may be authorized by law, rule or the association's governing documents.

This was confirmed by the Court's 2015 advisory opinion. The new ruling also concluded that additional activities which constitute the practice of law include:

- drafting amendments to the association declaration and bylaws;

- determining who must receive a pre-lien letter; and

- analyzing statutory or case law to reach a legal conclusion.

However, tasks which are ministerial or do not require interpretation of the association governing documents or law do not constitute the practice of law, and may be performed by community association managers. This includes preparing certification of the amount of assessment due by an owner; determining the number of days' notice required for an action or meeting, if it does not involve interpretation of statutes, rules or governing documents; and drafting meeting notices and mailing affidavits.

THE BOTTOM LINE: While association managers must have general knowledge of the association's governing documents and laws related to association governance, managers should avoid the unauthorized practice of law and consult an attorney on matters which require the interpretation of governing documents or the application of state, local or federal law.

MONTGOMERY COUNTY BOARD TRAINING ON TRACK FOR 2016

Condo, co-op and HOA board members in Montgomery County, Maryland are now required by a new County law to take a class on the responsibilities of serving on the board of directors.

Touted as the first law in the United States to mandate training for community association board members**,** the requirement applies to any director elected or appointed beginning in January 2016. Directors are required to take the training class within 90 days of being elected or appointed to the board of a condominium, housing co-op or homeowners association.

The Montgomery County Commission on Common Ownership Communities (CCOC) has developed a free, online training program for directors and others who wish to take it.

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Board Training
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According to the CCOC, it will take about 2 hours to complete, can be taken in steps over time and will include short quizzes which must be passed in order to move to the next section. Board members will also have the option to attend an in-person class taught by community association attorneys and managers.

The training program is based on both Montgomery County and Maryland laws, and will include "best practices" for association management.

A director who does not complete the training program is not prevented from continuing to serve on the board. However, a CCOC dispute resolution panel may consider failure to complete the training in deciding a dispute between an association and an owner. And, the CCOC may take legal action to enforce the new training requirement.

THOMAS SCHILD LAW GROUP, LLC represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. The firm advises community associations on all aspects of association operations including covenant enforcement, assessment collection, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.
