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Community Associations Newsletter

Regulating Parking on Public Streets within an Association

By: Nichole D. Flippen and Leslie S. Brown

Recently, a number of our community association clients have raised concerns about recreational and commercial vehicles parking along their streets. Not only are these vehicles eyesores, they also monopolize valuable parking spaces within the community.

In an effort to rid the association of these vehicles, many of our clients have sought to implement parking restrictions that would ban recreational and commercial vehicles from parking within the association, and would allow the association to take self-help measures (i.e. imposing fines, towing, etc.) to remove these vehicles when parked in violation of the association's parking restrictions. However, before any such efforts are taken, the association must first confirm whether the streets are publicly owned and if the Board of Directors has the authority to enforce the association's parking restrictions against vehicles parked on the public streets.

The mere fact that a street falls within an association's boundaries does not

necessarily mean that the association has the authority to enforce its regulations against the vehicles that travel or park on the street. To determine whether an association has the authority to regulate parking on the public streets that fall within its boundaries, and how its Board of Directors may go about doing so, the Board must refer to the restrictive covenants contained in the association's recorded covenants and any Deed(s) of Dedication that apply to the streets within the community.

Courts have generally held that vehicles parked on streets dedicated for public use were not subject to an association's restrictive covenants. However, an exception exists when (i) the Deed of Dedication pertaining to the streets contains specific language reserving the association's right to enforce its restrictive covenants, and (ii) the association's recorded covenants (Declaration and/or Bylaws) grant specific authority to prohibit recreational and commercial vehicles from parking within the association.

In most cases, the recorded covenants either (i) do not contain parking restrictions that would allow the association to prohibit recreational and commercial vehicles from parking within the association, or (ii) have not been recorded against the title of the public streets within the association with a reservation of the right to impose restrictions on the use of the public streets. As a result, many community associations lack the authority to enforce their parking restrictions against nonconforming vehicles that are parked on the public streets that run through their communities (but may still maintain the authority to at least regulate the private, association-owned streets).

When an association does not have the specific authority to regulate recreational and commercial vehicles parked on the public streets within the community, there are other options that may be available to limit the amount of commercial and recreational vehicles parked within the community.

First, restrictions on commercial and recreational vehicles may be included in local ordinances and it could be deemed a violation of local codes to park certain types of commercial and recreational vehicles within specifically zoned areas. As such, communities can look to zoning enforcement offices for assistance in certain cases.

Even more useful, in Virginia there is a statute that permits certain local jurisdictions (to include Fairfax, Stafford, Arlington, and Prince William Counties, and the Towns of Clifton, Herndon, and Vienna, with Hanover County to be permitted July 1, 2011), to create “residential parking districts” upon petition by residents who meet certain qualifying criteria (i.e., the residences must be sufficiently close to the public road or the residents have property affronting the road sought to be restricted). Upon application, residents can seek the creation of a “residential parking district” from their local authority. If approved, the creation of the district would make it a violation to park certain commercial and recreational vehicles within the district within the effective hours created and local authorities can be contacted for ticketing and/or towing enforcement.

We have assisted a number of our community association clients in petitioning local jurisdictions for the creation of residential parking districts and in reviewing governing documents and Deeds of Dedication to determine whether such communities have the ability to enforce their restrictive covenants on public roads. If you need such assistance, please do not hesitate to contact one of our community association professionals for further information.