

PARKING POLICIES ENFORCEMENT: KNOW BEFORE YOU TOW

Parking is a hot topic in the Colorado rental market. There never seems to be enough parking for your tenants. As a manager, you have to decide when to tow a tenant's vehicle. This month we discuss best practices, rules and enforcement of your parking policies.

When reviewing possible parking violations, you must start with your lease. You must review your entire lease, including addenda, particularly parking addendums and community rules and policies. While the base lease may include a general provision allowing towing, often a Parking Addendum, and/or the Community Rules and Policies Addendum provide further details. In addition to getting the details, you need to make sure you don't have conflicting provisions in your lease package. Wrongful towing can cause major headaches and cost money to all involved: you, your tenant, and your towing company.

The state also imposes towing regulations. The Public Utilities Commission (PUC) regulates towing in Colorado. The PUC requires you to provide notice to the vehicle owner prior to performing a tow of a vehicle off your property. Notice of any parking limitations, regulations, restrictions and/or prohibitions for your property must have been provided at or before the time the vehicle was parked. The notice must also state that the vehicle is subject to being towed at the vehicle owner's expense. This requirement can be met by the proper wording in your lease agreement for tenants. However, tenant's guests' vehicles, or other unwanted vehicles, have to be provided with notice to the vehicle owner. One way that you can do this is to post signs on your property.

The PUC has specific requirements for the sign(s). The sign(s) must have been in place prior to a tow of the vehicle. The signs must be placed permanently and conspicuously near each entrance to the parking area. This signage must also meet the following requirements: sign must be no less than one square foot, the letters cannot be less than one inch high, there must be contrasting letter colors, the restrictions to be enforced must be stated, and the sign must include the name and number of the towing company. If you have contracted with a professional towing company, then most likely they have placed signs on the property that are in compliance with PUC regulations.

The benefit of providing the towing notice, by signs on the property, is that the PUC deems this signage to be providing notice to both tenants and non-tenants, i.e. notification no matter who parks in the area. This allows enforcement against non-tenants who would not be aware of parking rules set forth in your lease.

Recently the Firm has seen an increase with properties booting vehicles rather than towing vehicles. While booting may be less expensive and less invasive than towing, it may not solve the parking problem. Also, booting keeps the improperly parked, or unauthorized vehicle in the parking area, and could result in a direct confrontation with the tenant over the booting of the vehicle. Another consideration, with respect to booting, is that most leases and addenda we review do not include language related to booting. If booting is a direction that you would like to

go in, you will need to make sure that you have the right language in your lease to allow tenants' vehicles to be booted.

Communication is the best prevention to towing disputes. Typically, the tenant is unaware that their vehicle is out of compliance with the lease, and a simple reminder goes a long way in correcting parking violations. However, if you've attempted to talk to the tenant, served any required notices and the tenant still isn't complying with the parking rules, you may need to have the vehicle towed.

As with any enforcement issue, including parking enforcement, you need to be in compliance with fair housing laws. Your policies must be uniform and consistent for all tenants. Protecting your property from fair housing claims starts with documentation. If your lease provides that you give a tow warning to a tenant, document the day and manner that the tenant received the tow warning. If you have discussed a possible tow situation with a tenant, keep notes on when and what was discussed. If a tow has been done, keep track of the tow details and why the vehicle was towed.

As with any disability-related request, keeping an open dialog with your tenant is key. Please refer to the THS June 2013 Newsletter for an in-depth discussion on assessing requests for close-up reserved parking requests.

Remember, you need to have the proper language in your lease to ensure that you have the right to enforce parking violations, and the right to tow a non-compliant vehicle in addition to:

- Proper signage on the property
- Communication with the tenants
- Consistent and uniform enforcement of the lease.

Contact THS for advice if you are unsure about your towing policies, lease terms, notifications or any possible fair housing-related issues.