

LEGISLATIVE ALERT
COMMUNITY ASSOCIATION CLIENTS IN MONTGOMERY COUNTY, MD
TOWING ENFORCEMENT, SIGNS, ETC.

Effective November 30, 2015, any community association in Montgomery County, Maryland that has general common element or general common area parking spaces must comply with the new signage and towing authorization procedures outlined in Montgomery County Council Bill No. 17-15, which amends Chapter 30C of the Montgomery County Code. We issued a Legislative Alert regarding this law in June prior to its adoption by the Council on July 21, 2015.

These laws require that:

- A. Signs must, as of November 30, 2015, comport with the following:
1. Be at least 24 inches high and 30 inches wide;
 2. Summarize all parking restrictions on the property enforced by towing, including time and area restrictions;
 3. State that a vehicle parked in violation of the restrictions outlined on the sign may be towed at the vehicle owner's expense;
 4. Be clearly visible to a driver of a motor vehicle entering the property or parking area;
 5. State the name and telephone number of the towing company AND the location to which a vehicle will be towed;
 6. Be maintained in a legible and unobstructed condition such that the sign can be read in low light and is sized such that the sign is visible and able to be read by motorists in daylight and at night;
 7. Indicate that State and County law requires that the vehicle be available for reclamation 24 hours per day, 7 days per week;
 8. State the maximum amount that the vehicle owner may be charged for the towing of the vehicle; and
 9. If the parking lot has more than 100 spaces then at least one sign must be posted in a conspicuous place visible from at each of at least 25 parking spaces (assuming 8.5' by 18' standard parking spaces). If the parking lot has fewer than 100 spaces, the sign must be readable from each of at least 45 parking spaces.

It is critical to ensure that these new signage requirements are in place BEFORE any vehicles are towed. If your community does not install the new signs, **you must suspend towing (for non-safety related tows) until such signs are installed.**

- B. Before towing or removing a vehicle, the towing company must have a written contract with the parking lot owner (association or council), which shall include among other things:
1. A statement that the property owner is responsible for posting proper signage to notify the public of parking restrictions; and

2. A statement that the property owner or towing company is liable for a violation of any duty imposed on the property owner or towing company by County law, and that the damages payable are three times the amount of any towing, release or storage fees imposed; and
3. A statement that the property owner and towing company are jointly liable for a violation of any duty imposed on the towing company under County law, with a right of contribution or indemnification; and
4. A statement that any violation of Chapter 30C subjects the property owner or towing company to a potential fine of up to \$1,000.

Other provisions of the new laws apply more directly to the towing companies – like the maximum release fee of \$25.00, and retention of photographic evidence of the tow for up to a year; however, since any aggrieved vehicle owner may hold the owner of the parking facility (the association or council of co-owners) jointly liable for treble damages plus possible fines, all community associations with general common element or common area parking areas need to confirm that their towing contractor is aware of these new signage and contract requirements.

Additionally, for most of our community association clients in Montgomery County the new law requires (with limited health and safety exceptions) that each new tow must be authorized in writing (including email) prior to being initiated except for tows between 2am and 9am. This is a significant departure from prior practice when a community may have contracted with a towing firm to authorize towing during particular hours of the day or night on an as needed basis. Under the new law, any tow will now require a towing authorization form to be provided by the designated association representative to the towing company for each vehicle that is towed from the parking facility. This means that towing vehicles at any time other than between 2am and 9am will require some form of official authorization by a designated representative of the community association.

It is also worth noting that under this new law when a unit owner has been assigned exclusive use of a Limited Common Element parking space, he or she is considered the “owner” of the space and is the only person (or his or her authorized agent) that can authorize a tow from their limited common element space. The owner must follow the same requirements as the Association follows in terms of contracting with the towing company and authorizing any towing..

Under the new law, all parking facility owners (the council or association) must provide annual reports to the Director of the Office of Consumer Protection on the number of vehicles towed and the reason why each vehicle was towed (unless the Director waives such a requirement by finding that police department records are sufficient to meet the Office’s needs.) The Office of Consumer Protection will also have subpoena and other powers to enforce the provisions of Chapter 30C.

It is important for our clients with existing towing contracts to make certain that their towing contract has been updated to conform to these new laws. We also suggest having the towing

contractor acknowledge that the contractor is aware of and will comply with the applicable County and State towing laws, and that the contractor agrees to indemnify, and defend against claims associated with the contractor's failure to comply with these new laws.

In light of these new laws we are recommending that all of our Montgomery County community association clients immediately comply with the new signage and authorization requirements set forth above prior to initiating any towing of vehicles from general common element or general common area parking spaces after November 30, 2015.

We also encourage our clients and community association colleagues to contact any of the Rees Broome attorneys with their questions or to help ensure compliance with these new laws.

For a copy of the entirety of Montgomery County Council Bill No. 17-15, please use the link below:

https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2015/20150721_17-15A.pdf