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Reply to: Reno

December 29, 2023

Sent via email only stephanie.viau@fsresidential.com

Dayton Valley Community Association
c/o Stephanie Viau
FirstService Residential
639 Isbell Rd, Suite 320
Reno, NV 89509

Re: *Dayton Valley Community Association*
Enforcement of Parking Restrictions

Dear Members of the Board:

You have asked that I provide a non-privileged communication regarding enforcement of parking rules in the Association that you may provide to the membership.

As will be discussed below, the Association has authority both under the governing documents as well as Nevada law to take action with respect to those vehicles that are parked in violation of the parking restrictions. This enforcement may be citation, tagging, towing or other enforcement if you know the owner of the vehicle is a member (or tenant or family member) of the Association.

Because the Association has private streets and it is gated, the enforcement may include all available means up to and including towing. There is no common area parking lot and with the exception of The Gallery, which are townhome lots, all the lots are detached single family home lots. The Association also has a towing policy which our office drafted. As you will note, we referenced several statutes in that policy.

First, the ability to tow in general when there is a parking violation, and in a specific set of circumstances, is very tied up in statute. And not just one statute, but several – all of which have to be "harmonized." The relevant statutes include NRS 116.350, NRS 116.3102(1)(t), NRS 487.038, and NRS 706.4477.

First, NRS 116.350 provides that towing is not allowed in a community which is not gated or which has streets that are accepted by the applicable governmental entity. In the case of Dayton Valley, we don't need to worry about NRS 116.350 because the community is gated. In an <u>un-gated</u> community, NRS 116.350 would mean no towing from the public streets since the "extent authorized by law" does not permit an HOA to tow vehicles on a public street. There are provisions in NRS 116.350 which prevent regulations of certain vehicles such as a utility service vehicle or

emergence service vehicles, but it is my understanding that there has not been any attempt to enforce parking restrictions against such protected vehicles.

The next relevant statute is NRS 116.3102(1)(t) which provides:

> Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association: (t) Except as otherwise provided in this paragraph, ***may direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents.*** An association may not direct the removal of a vehicle parked on property owned or leased by the association solely because the registration of the vehicle is expired. ***In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle****:*
>
> (1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or
>
> (2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

For the Association, its governing documents do not prohibit towing so the Association may tow vehicles from the private streets (property owned or leased by the association) so long as it follows (1) any additional requirements in its governing documents, (2) the process in NRS 487.038, and (3) the requirement in NRS 116.3102(1)(t) to provide 48 hours' notice of tow unless the vehicle is parked in a way that allows for immediate tow (blocking fire hydrant, parking in handicapped space, imminent threat of substantial adverse effect on HSW).

> ***NRS 487.038 Authority of owner or person in lawful possession of real property to have towed therefrom vehicle parked in unauthorized manner: Oral notice to local law enforcement agency required; exceptions to authority to tow; residential real property; costs to be borne by owner of vehicle; other rights and remedies; voluntary payment to tow operator for abandoned vehicle.***
>
> 1. ***Except as otherwise provided in*** subsections 3 and 4 and ***NRS 116.3102 and 706.4477,*** the owner or person in lawful possession of any real property may, after giving notice pursuant to subsection 2, utilize the services of any tow car operator subject to the jurisdiction of the Nevada Transportation Authority to remove any vehicle parked in an unauthorized manner on that property to the nearest public garage or storage yard if:
>
> (a) A sign is displayed in plain view on the property declaring public parking to be prohibited or restricted in a certain manner; and

(b) The sign shows the telephone number of the police department or sheriff's office.

2. ***Unless notice has been provided pursuant to NRS 706.4477,*** oral notice must be given to the police department or sheriff's office, whichever is appropriate, indicating:

(a) The time the vehicle was removed;

(b) The location from which the vehicle was removed; and

(c) The location to which the vehicle was taken.

3. Any vehicle which is parked in a space designated for persons with disabilities and is not properly marked for such parking may be removed if notice is given to the police department or sheriff's office pursuant to subsection 2, whether or not a sign is displayed pursuant to subsection 1.

Per NRS 487.038, in order to tow a vehicle off the streets, which are the Association's responsibility, the Association must post certain signs and follow both NRS 116.3102 (discussed above) and yet another statute, NRS 706.4477.

NRS 706.4477 also requires 48 hours' notice of a tow except it specifically explains that a vehicle may be immediately towed if it previously got the 48 hour tow sticker for the same parking violation OR it had been stickered 3 or more times within the preceding 6 months for any parking violations (i.e. the violations do not need to be the same: once could be parking in a guest spot, another could be parking outside the space lines so as to take up 2 spots, etc). This same statute also clarifies that parking in someone else's clearly marked, assigned parking space is a Health Safety Welfare (HSW) violation subject to immediate tow.

Per the CC&Rs, residents cannot park on the streets between midnight and 6 am. If you sticker a vehicle parked on the street in front of house A on Monday night and Tuesday night it moves a few spaces down to park in front of house B, and then across the street on Wednesday night to park in front of house C, it is still the same vehicle, parked on the same private street in violation of the same CCR provision. If you had to start over with 48 hour notice every time the vehicle moved a few feet, a resident could effectively evade enforcement forever. That is why the Association's tow policy includes paragraph 2 below:

> 2. The 48 hour notice period on the Towing Notice commences from the time the notice is affixed to the Violating Vehicle and shall run, ***regardless of any intermittent departures or different parking locations within the Development.*** Such Towing Notice shall be deemed to apply to any Violating Vehicle that has been given the Towing Notice, and is found unlawfully parked anywhere in the Development. At any time after the lapse of the Towing Notice, the Violating Vehicle may be removed without an additional Towing Notice for a period up to six (6) months. Notwithstanding the foregoing, once a vehicle has been towed based on a prior Towing Notice the Association will start the process over with a new Towing Notice.

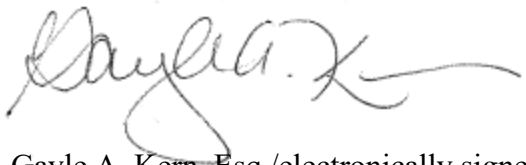
In summary, in my opinion and consistent with the tow policy, if the Association has a few residents who are parking on the private street in violation of the CC&Rs, once you have stickered that particular vehicle for parking on the street, the Association may have it towed once 48 hours have elapsed even if it has changed locations on the private street during that period. Keep in mind

that the tow policy places some limits on towing after the 48 hour notice: (1) that the HOA will "start over" with the stickering process once it has towed a vehicle and (2) that initial tow sticker is only "good for" 6 months (i.e. if I park on the street in January and you sticker my vehicle for tow, if I don't park on the street again until September, the HOA would not be able to rely on the January tow sticker to remove my vehicle, it would have to sticker my vehicle again BUT if I parked on the street only a month later, it would be able to tow me based on that last sticker).

In addition, it is my opinion that the Association may also enforce the parking rules with a citation or follow the enforcement process to assess fines or other sanctions such as revoking privileges of voting or use of common area facilities. However, be aware, the Association may not prevent someone from using the streets to access their home.

If you have any further questions, do not hesitate to contact me.

Sincerely,



Gayle A. Kern, Esq./electronically signed