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Eagle Landing at Oakleaf Plantation Homeowners Association, Inc.

RE: TOWING OF VEHICLES

Dear Directors:

I was asked to provide a legal opinion as to whether the association can tow vehicles from roads located inside the Eagle Landing HOA. It is my understanding that the roads in the community are not owned by the association and are public roadways.

The authority to tow is derived from what is known as the “Towing Statute”:

The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle or vessel parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage.
Fla. Stat. 715.07 (emphasis added).

The critical clause in that statute is “owner or lessee of real property”. Only the owner or lessee of the property where the vehicle is parked has the authority to tow under Florida law. As such, in situations where the HOA owns the roads, they have the authority to tow vehicles from them¹. But in situations where the roads are owned by a municipality and not the HOA, the association does not have the right to tow from them. In fact, if an association was to tow a vehicle from public roads, they would be liable for the costs of the towing and potentially any related damages. The association would only have the right to tow from any property owned by the association itself, such as common areas².

There is a potential workaround, however. If the governing documents specifically state that a certain vehicle is not allowed to be parked in the community (and importantly, the language is clear that the vehicles cannot be on the roads, not just language addressing vehicles stored on a lot) then the association

¹ It is important to note that the Towing Statute mandates many requirements that an owner of the property must meet in order for the tow to be lawful. As these requirements are outside the scope of the legal question presented, I have chosen not to include them all in this legal opinion. However, I would strongly encourage anyone who does implement towing to carefully review and follow the procedures and requirements of 715.07 which can be found at:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0715/Sections/0715.07.html

² “Common area” means all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:

(a) Real property the use of which is dedicated to the association or its members by a recorded plat; or
(b) Real property committed by a declaration of covenants to be leased or conveyed to the association.

Fla. Stat. 720.301(2).

can pursue a vehicle parking in violation of this rule through the standard covenant enforcement process. The association would send a violation notice; then have the attorney send a mediation demand as required by statute; and ultimately, the association could bring an injunctive lawsuit seeking an order from the court requiring the owner to abide by the covenants (i.e. not park the disallowed vehicle on the street). If the owner continues to violate this rule, the court via its contempt powers could issue an order granting the association the power to tow from the road. As with any covenant enforcement lawsuit, the association would be entitled to an award of all associated costs and attorney fees if it were deemed the prevailing party.

I hope this information has been helpful. Please let me know if I can be of further assistance. Thank you.

Regards,

A handwritten signature in blue ink, appearing to read "Sean Murrell", with a stylized flourish at the end.

SEAN MURRELL, ESQUIRE

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