

TOWING EVOLVES

Towing – A Service for Property Owners/Agents

Private Property Towing Services?

Who are we?

My name is Burt Dean, CFO of Rebello's Towing Services, Inc.; let me introduce Shannon Denos, Vice President, Rebello's Towing Services, Inc., who has been with the company for 10 years, and is one of the most knowledgeable individuals in the state of California for non-consensual towing. He is a Director for the CTTA and represents the Bay Area CTTA Chapter in State meetings; he holds a Qualified Manager's license through the California Bureau of Consumer Affairs allowing him to own and operate a repossession business; he is responsible for repossessions and private property towing at Rebello's.

Burt Dean retired in the early 1990's from property management after achieving professional certifications including CPM, CCAM, and NAHM. My interest in private property towing was born from a fear of the tow companies; I would not subject my residents to the corruption of towing services that existed at that time. The drivers were on commission, and enforcement of the towing laws was minimal, along with safety to people, and property. Tow drivers typically grabbed cars and drug them to the street for a fast buck. There were confrontations where vehicles were damaged, people were injured, and the towing industry got the tenuous reputation of being "bandit towers", and gave private property towing the label of "predatory towing".

The City San Jose and several other cities recognized the need to regulate private property towing and passed municipal codes to try and eliminate abuses to the public, and provide a safer environment to the property owners/agents. As a frustrated property manager for subsidized low to moderate income housing under HUD 236 and 241D programs, I recognized, at that time, this platform was a business opportunity for someone to operate a tow company professionally, as a service to professional property managers. After purchasing a small tow company in 1994, and going through a change in career from professional to small business owner/operator, I persisted in my initial concept of offering private property towing as a "service to professional property managers". I knew from experience that property managers do not want to tow their residents; however, they have an absolute requirement to control the vehicles, keep fire lanes cleared, and provide a safe parking lot for residents, the same as cities need to control public streets.

The American way is having the opportunity to build a better mouse trap. Last October, Rebello's won an award from the Silicon Valley Business Journal as being the 32nd "Fastest Growing Privately Held Corporation in the Bay Area". I hold a seat on the CTTA Legislative Committee and participated in developing the new CVC 22658 which became effective January 1, 2007.

Towing Empowers Professional Management to Control their Parking Problems

Professional property managers, REIT (Real Estate Investments Trusts), large corporate owners, and PUD (Planned Unit Developments) are expected to provide their residents with safe, adequate, and emergency parking facilities. This can be accomplished through: (1) Issuing warning letters followed up with court action, or: (2) Contract with towing services for immediate action and problem resolution.

MEASURED PROPERTY MANAGERS TIME, COST AND FRUSTRATION AS:

Collecting facts and issuing warning letters with legal processes

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Contract towing services and responding to angry residents over THEIR violations

Towing should only be considered as a service FOR residents:

- ✓ Guarantee their assigned parking spaces
- ✓ Remove abandoned or non-operational vehicles consuming valuable spaces
- ✓ Maintain the fire lanes and handicap spaces clear for intended use
- ✓ Clear vehicles for maintenance or emergency work are required (paving, water or sewer line breakage, etc.) Potentially, protecting vehicles from potential damage.

Set-Up for Private Property Towing

Contract for towing should be the same as any other contract. Towing companies need to provide:

- ✓ Certificate of insurance
- ✓ Workers comprehensive coverage
- ✓ They should have a contract outlining the services rendered.
- ✓ Trucks need to be registered with the DMV and display a five digit CA number
- ✓ Name of the company with phone number needs to be on the side of the truck
- ✓ They need to have a local business license
- ✓ References should be obtained:
 - Local police authority should respond with violation history
 - References should be requested from other properties
 - Are they a member of any professional towing organizations
- ✓ Additional considerations that should be required by law:
 - Bond in the amount of \$50,000 (if they can't get a bond, you don't want to expose your residents to them)
 - Either 2000 hours or 4 years experience in private property towing
 - Salaried vs. commissioned drivers. We believe that commissions are corruptible. Drivers should tow vehicles as directed, not because they need to make a tow to feed their family.

Negotiation between towing companies is not limited. Although property management may not control the fees charged to the vehicle owner, the services are negotiable. Private property towing companies may offer pro-active services that can patrol fire lanes for violations, and tow by photograph, while others may offer only re-active towing services that respond only when called upon.

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- ✓ How many trucks are available in case of a pavement job in case multiple trucks are required while the contractor stands by with men and equipment?
 - ✓ What is the average response time:
 - How much notice is required in advance for contract work, such as pavement re-sealing?
 - Do they patrol for fire lane violations, or respond on requests only?
 - What average time is anticipated for removing a vehicle from a reserved parking stall when called? Fire lane? Handicap stall?
 - Do they tow abandoned, junk, or non-operational vehicles for a fee? What is the fee, or how many vehicles will they accept before they charge a fee?

The law prohibits any “kick-backs” to the property owner/agent. Although it is legal for cities to request part of the tow charges, it is illegal for the tow company to rebate any of the tow charges to anyone. There is a difference between participating in or rebating tow charges, and negotiating a contract. If the property has the potential of numerous tows, the tow company may be encouraged to participate in the cost of set-up to get the account. Some of these costs could include the permit fees in San Jose, cost of the signage for the property, and/or cost of parking permits for the vehicle owners. The tow company would expect a dependable program from management for enforcing parking permits and fire lanes. Other property improvements such as fire lane painting, resealing the pavement, installation of fences and gates, would be remote, if not questionable, for the tow company to offer; at some point it may be apparent that the complex is promising a large number of tows on a regular base, which may be less than what a resident would like to hear about arrangements made for towing their vehicles. It may be politically incorrect for the management company to negotiate at the risk of the residents.

Another problem of sorts is having the tow company paint or refreshes the fire lanes or handicap stalls as a part of their regular services to the complex. Given too much latitude they could paint curbs that the property management does not necessarily need painted, but the tow company knows it could be a hot spot for towing. It is our suggestion that this service, if provided by the tow company, should be brought to the attention of the local police authority for their opinion, first.

All in all, it is to managements benefit to negotiate a contract with a responsible tow service that performs the service timely, responsibly, and legally. The tow company should be able to demonstrate that their care and custody of vehicles is reasonable, and their attitude with the public and your residents is courteous. It would be my recommendation, as part of the tow company selection process, for the property manager to go to the tow yard, look at their facilities, and ask to see how they perform their vehicle releases. A checklist for the tow yard should include:

- ✓ How close do they park vehicles; it is recommended to have 2 foot of clearance around all stored vehicles for safety against accidental opening of doors against another vehicle, or when moving vehicles in and out of stalls.
- ✓ Yards should be illuminated at night for people picking up their vehicles.
- ✓ The yard and office needs to provide a telephone to the public for emergency use.
- ✓ What security systems protect the personal property within vehicles towed?
- ✓ What is their procedure for filling a damage claim?
- ✓ What is their procedure for handling complaints? (verbal vs. written complaints)
- ✓ What is the procedure and average waiting time for someone who wishes to claim their vehicle after hours or on the weekend?

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- ✓ Ask yourself:
 - Is this the way you want your residents and their personal property treated?
 - Is this financial burden, inconvenience, and frustration for the vehicle owner necessary, as part of the property enforcement procedures, to gain a level of parking compliance required to service the resident body as a whole.

A Little History

Earlier I mentioned cities took action when needed to try and control their private property towing issues.

- ✓ San Jose passed Municipal code 6.66, which licensed properties that would post proper signs with phone numbers and name of an approved towing company. San Jose was the only city we know of that limited the number of tow companies that a property could contract, to one, for private property towing. The San Jose code requires a tow away sign posted at the entrance, 18" X 24", with letters 3" and 1" with the name and phone number of the authorizing agency;
- ✓ CA State law requires signs 17" X 22" with letters no less than 1". San Jose requires each property to have a contract with just one tow company, other cities allowed properties to call any tow company, or even have a rotation system.

Revised CVC22658 Effective January 1, 2007

Specific legislative objectives for the new laws:

- 1) Reduce demand on resources from local police authorities: Historically, the local police department responded to requests from vehicle owners or tow drivers when there is a problem.
- 2) Safety to the public: There needs to be regulations to avoid leaving people stranded unnecessarily.
- 3) Eliminate "Bandit Towers": There needs to be some common ground of professionalism for any tow company performing private property towing.

Some issues created by this new law

There are new problems with the existing laws. There are written opinions from attorneys that question a great deal of language in the new laws. Frankly, critical readings of the new laws can produce numerous issues:

- ✓ The property owner/agent is required to call and report the tow within one hour CVC 22658(f). The tow operator is also required to report the tow CVC 22658(m)(1).

Problem: The car needs to be reported after it has left the private property. The law does not require reporting until it has left the private property; for instance, drop fees are payable while still on the property, but there is no

reporting of that transaction required.

Once the vehicle is left the property, and the manager tries to report the incident, there is no way they can verify the VIN number, or license number, if they contain bad numbers.

If the property owner/agent and the tow company report the same tow, this is doubling the efforts and demand of time from the police department which is in conflict with the intent of the law.

Solution: Contact the local police agency and obtain consent to have only the tow company report the tow. Police jurisdictions we contacted have all declined to have the vehicle reported by the property owner/agent.

- ✓ CVC 22953 states that owner/agent cannot tow a vehicle from a parking lot held open to the public until it has been parked for at least one hour, except for paid public parking lots, residential housing, hotels, and motels and on mixed commercial properties where the stalls are clearly designated for assignment to room numbers. Blocking fire hydrant, parking in fire lanes and handicap stalls, and blocking entrances or exits to the property are exempt.

Problem: The wording, above, is my interpretation of the way the law is written. There are some jurisdictions that suggest an individual store, within a commercial parking lot, can put signs up designating parking for their store only, making it exempt from the one hour waiting period. Other suggestions are that you only need put up a sign saying, "Open Public Parking Prohibited" and this will exempt it from the one hour waiting period.

Solution: I am not sure this is an arena where owner/agents want to find wiggle room. If you take someone's vehicle with heart medication in it, and they have a heart attach when their vehicle is gone, you may wish you had waited the hour. If you obtained consent from the local police authority to use signage exempting a parking lot from the one hour waiting period, it would not be the police department that suffer the loss, nor would they be the ones to file an action against you; it is the vehicle owner that would go to court against the property and tow company.

- ✓ CVC 22658(b) requires the tow operator to notify the vehicle owner IMMEDIATELY, UPON REMOVAL, that they have towed their vehicle and why.

Problem: If the tow driver knows the location of vehicle owner they are required to leave a notice in writing they have towed the vehicle, and why. It does suggest that the driver make an attempt to obtain the information; subsequently, the driver would be required to stop at the street and return to the property and leave a notice.

- If the person finds the notice before the driver leaves, the police may need to be called which violates one of the objectives of the new law, which was to reduce the demand on law enforcement resources.
- It would be assumed that the driver would need to leave his equipment, hooked up to the vehicle, on public streets while he returned to the property to leave the notice. There would be no protection for the driver, while on foot away from their radio, and the equipment or vehicle in tow could be vandalized in their absence.

Solution: The driver does not assume responsibility for the prior attempts by management to post the property and notify residents of the rules for towing. Therefore, it is assumed that the vehicles being towed are not recognized by the person authorizing the tow. If management does not register vehicles, or turnover of vehicles by residents, the identity of the vehicle owner would not be known.

- ✓ March 22, 2007 we went to the City of San Jose Police Department and requested their clarification of three issues. Officer Barner, Tow Liaison, responded in writing with his interpretations, but clearly stated this was not the interpretation of the Can Jose City Attorney. To obtain that “higher” level of clarification would take considerable effort, time, and on limited budget, we should not be expecting it to be forthcoming.

Problem: Obtaining a general authorization from the police authority is not as good as an opinion from a city attorney. In either case, a judicial procedure could be brought by the vehicle owner, and a jury would make a final decision based on the case presented. Attorneys are engaged to give opinions, and those opinions need to be understood, and could differ from both the police authority, and city attorney.

Solution: Owner/Agents need to make business decisions based on all information available. Making a decision that flies in the face of common sense, sound business practices, or good advice is bound to produce unnecessary anxiety.

Lets examine a few examples:

- The question of whether or not an owner/agent must wait 96 hours before towing a vehicle was put to Officer Barner, San Jose Tow Liaison, who responded that the required signage at the entrance to the property is approved by the city, as a part of their permitting process, for immediate towing.

Most of the legal objections to immediate towing, written by attorneys, may be more concerned with the voluminous requirements that need to be met, including legal cause, identification of the vehicle, proper written authorization, whether or not a one hour waiting period is required, proper times and information is entered onto the work order, who is authorizing the tow and the authorization of the tow company. Failing some of these requirements and the owner/agent may be exposed to crimes and/or liability. If I were an attorney, I would assuredly advise a strong caution, too.

Recommendation: If the local police authority stands behind the signage provision, the signs at the entrances meet the local and state code requirements, and the tow company has a clean record of towing with the local authorities, immediate towing can be contracted.

- Does the homeowner with a deeded parking stall require a separate sign for their personal stall, and a separate contract with a tow company?

This would require numerous signs throughout a complex, would be a violation of the CC&R's, and open the possibility of numerous different

tow companies towing from an association.

Recommendation: It may be understood that the only required sign would be at the entrances/exits from public property, but that only an owner of the deeded parking stall could sign for a tow, unless they assigned that authorization to property management or security.

- Is the owner/agent responsible for the mistakes or oversights of the tow company?

This raises the issue of who is liable, who qualifies as an agent, whether it is an approved tow under general authorization, or written authorization requirements.

Recommendation: The argument of who is an agent, whether or not a security guard qualifies as an agent, should not be an issue under towing laws; agency is certainly clarified in other laws. Under towing laws it is clear that the owner/agent is responsible for specific items below. Again, if you select a professional tow company, they would be prepared to perform on the contract properly, and legally. The property should expect to hold them responsible to assist with the following requirements, and listen to their advice:

- Maintenance of the property signage at all entrances/exits to the property 96 hours before any tow is made.
 - The authorized person must sign the work order, and clearly write their name and contact (job or home) information.
 - The violation under the written authorization is clearly stated on the work order.
 - The vehicle information identification is completed on the work order.
 - Enter date and a time the violation was first discovered, and time the work order was signed.
 - The person signing a written authorization actually witnessed the violation, in person.
 - The person signing the written authorization remains on the property until the tow is accomplished. (They are not required to witness the tow, or confront the vehicle owner – for safety reasons)
- ✓ CVC 22658(a)(1) states, “The sign may also indicate that a citation may also be issued for the violation”. This did not change from the previous language, but can be interpreted in a number of ways:
 - Does this allow the owner/agent to charge a monetary fee?
 - How would the cost of the citation be determined?
 - Can the owner/agent engage a security company to patrol the property and allow them to collect these fees as payment for their services?
 - Can the tow company collect these citation fees at the time the vehicle owner claims their vehicle, and then transfer those fees to the property owner/agent?

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- If the tow company is prevented by law from collecting the citation fee, would it be possible for them to disclose the name and address of the vehicle owner to the property/agent so they could collect?

Problem: Initially, this appears to be a viable incentive for large complexes. It could be a source of income to help defray the cost of security to patrol the parking lot. Most police jurisdictions charge a fee called, "release fee", to the vehicle owner before the tow company can release the vehicle. Typically, this release fee is around \$100. Parking citations generally cost between \$25 to \$50.

Since the name and address of the vehicle owner is held confidential by the DMV, it is nearly impossible to obtain that information unless the vehicle is towed; and, according to our legal advisor, the tow company can release the name of the vehicle owner to the property owner/agent, because they are in contract, and it would be considered a transfer of information between departments. It would be the responsibility of the property owner/agent to pursue and collect for any monetary citation. It would not be advisable, in my opinion, to expect the tow company to collect and transfer the fees to the property owner/agent.

I have asked Officer Barry Barner (San Jose Police) and Jay Johnson, (Milpitas Police) what their considered opinion was, and they do not go much further than to say it is not intended to authorize monetary citations to the benefit of the complex.

Solution: Do the benefits justify the problems created by the new CVC 22658? Some of the old law was favorably improved, some of the new material is seriously flawed, and more questions arise than anticipated.

IN CONCLUSION – It is all about communication and co-operation

All in all the towing industry is making progress. Private property towing needs to be safe, we need to reduce the demand for time and resources required from police authorities, and bandit towers need to be eliminated. This January 1, 2007 revision of CVC 22658 leaves a lot to be desired, but it is a start in the right direction. The CTTA (California Tow Truck Association) needs the cooperation of property managers and owners associations to work together at the state lobbying level to give proper direction to our legislators.

Property management can resolve their parking problems quickly with towing, or they can use their administrative relief through warning letters and court procedures. With the increase of population density, buildings get higher, and parking is where the squeeze is the greatest, and parking problems can be expected to deteriorate. If we continue to raise the qualifications for private property towers, property owners/management can expect a floor of professionalism from the industry. The day should come sooner rather than later for property management to be able to affect immediate control over their parking lots, with minimal time, cost, or liability. Management can be firm, but fair, and protect their good residents from the abuses of others carelessness'. Towing should be a last resort, but property management should expect dependable, safe, and professional services at all times for the vehicle owners towed from their properties.