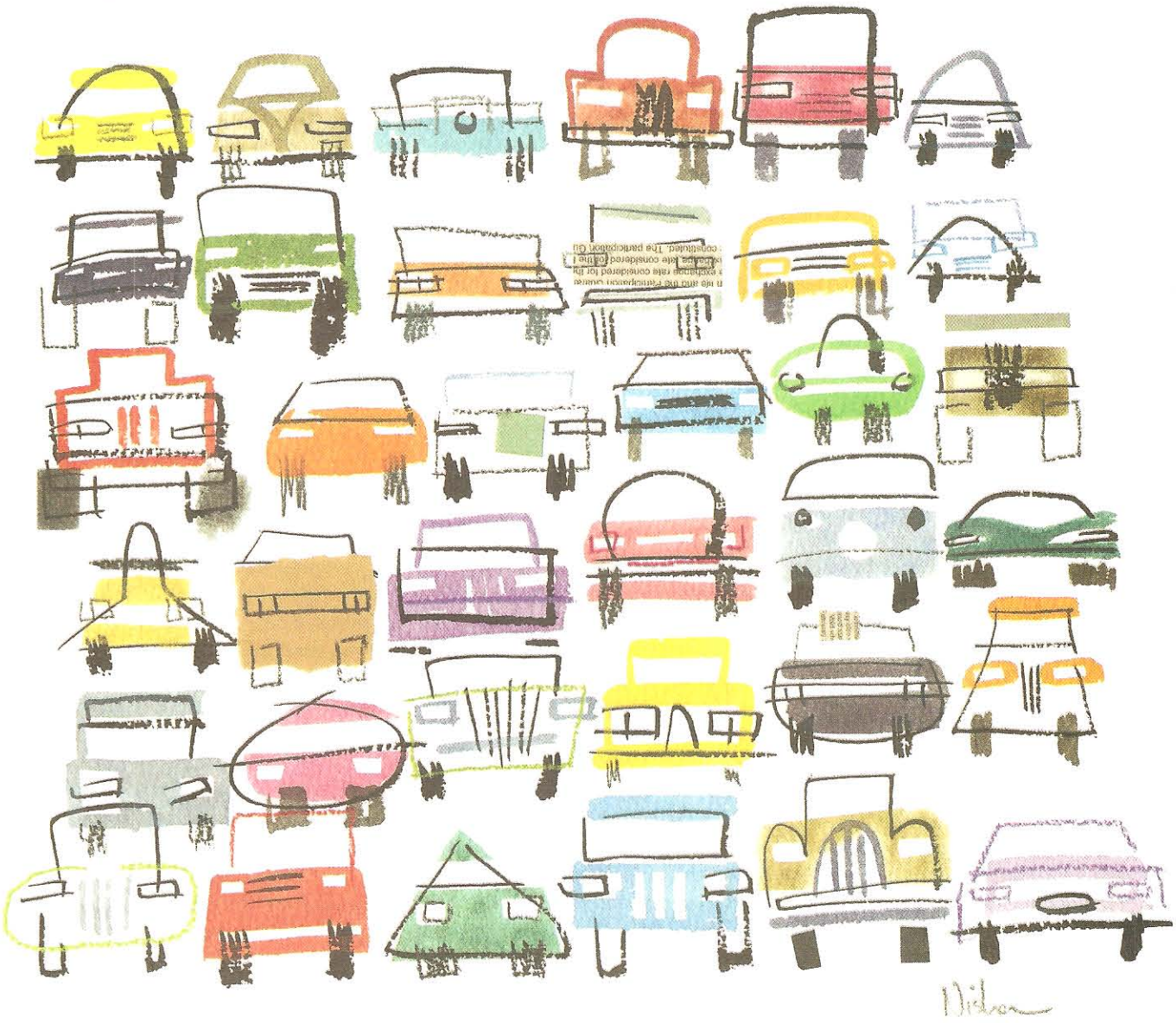
car TROUBLE

By Ellen Hirsch de Haan, ESQ.

Are parking problems causing your residents to erupt in road rage? Maybe you need to review your rules.



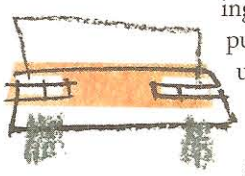
IT'S THE DEAD of night. Suddenly, the silence is shattered by shouts and the sounds of running feet. Is it a robbery? A drive-by shooting? No. It's a confrontation between a resident and a tow truck driver.

Many association leaders know all too well that conflicts over parking spaces can elicit strong emotional responses, resulting in keyed paint, flattened tires, spray-painted graffiti on the board president's car, angry phone and e-mail messages and sometimes even physical altercations.

How can such a small piece of property cause so much angst and anger? It all begins with the assignment of one or more parking spaces per unit by the original developer. The use of parking spaces often is included with the units. Remaining, unassigned spaces are common elements and controlled by the association board.

Questions about regulating parking are abundant. Answers don't come as easily. But here are answers to some common questions to help your association avoid a few of the more troublesome potholes.

Can a unit owner sell his or her parking space? A person who has legal title to property can sell that property, but an assigned parking space in an association is a limited common element. It is part of the common elements reserved for the exclusive use of a particular unit. Even if the owner paid the developer for a prime or covered parking space, he or she purchased a right to use the space, not an ownership interest. Under the law, each association member has an undivided ownership interest in the common elements.



By logic and law, you can't sell what you don't own. Nevertheless, some enterprising owners try to rent their spaces while they are away for the summer; others try to sell a prime parking space to another unit owner; still others have tried to transfer their unit's assigned space for cash right before bailing on a foreclosed unit. Ultimately, an owner cannot sell a parking space, and any attempt to do so voids the transfer.

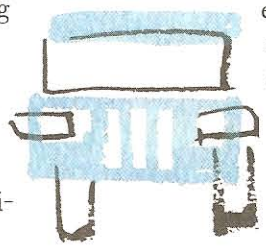
Can associations sell unassigned spaces? The same logic would apply to the association. The spaces are common elements, and the association has no ownership interest in them. Therefore, absent express language in the declaration or master lease authorizing the association to charge a fee for the right to a parking space, the right to use a parking space cannot be sold.

What about exchanging parking spaces? Before a board sanctions or tries to enforce a rule against a parking space exchange, it needs answers to some basic questions:

- Do the governing documents contain a procedure for exchanges?
- Is the association obligated to keep a record of who has which space?
- Does the board have to approve the exchange?
- Is there any law affecting or limiting the exchange of parking spaces?
- Do the documents or the law allow money to change hands?
- Does the association have the right to charge a fee for processing the exchange?

Depending on the authority given to the board, regulations in the documents and limitations in the law, parking space sales and exchanges can result in liability for an unwary board or association.

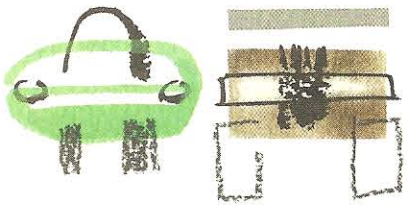
Can the board force an owner to park in the unit's assigned space? In most associations, one or more spaces are assigned to each unit. Boards should use their rule-making authority to adopt parking policies that require owners to park in their assigned spaces. That gives the association the authority to enforce the rules if an owner violates this provision.



Can the board force owners to change their assigned spaces? Some governing documents allow a board to switch owners' parking spaces for various reasons. However, if the spaces are legally attached to a particular unit, it would be illegal for a board to sever the space from the unit or to revoke the owner's right without his or her consent.

What types of vehicles can be parked in the community? Ideally, the declaration or master lease lists the types of vehicles that can be parked in the community. Sounds simple, but it isn't. The declaration may state that trucks may not be parked in the community, but have you looked around the parking lot lately? Is an SUV a truck? Is a hybrid vehicle a truck? What is a commercial vehicle?

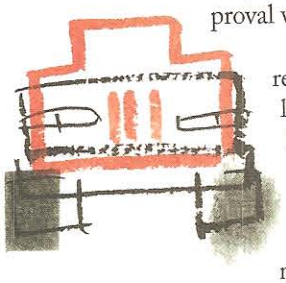
If you are faced with vague or ambiguous language, create a detailed definition for each type of vehicle you want to incorporate into the association's rules. For example, the definition for "commercial vehicles" may mean any vehicle that shows any commercial markings, signs, displays, equipment, inventory or apparatus, or otherwise indicates a commercial use.



How many cars per unit may park on the premises? It's hard today to imagine a community in which there is one car per family or unit, but if your governing documents were recorded in the 1960s, that was typical. Perhaps land was at a premium when your community was developed, and the number of spaces exactly matches minimum requirements of the building code. Today almost every adult seems to have a car, and when you add teenagers or roommates to the mix, there can be three or four cars per home. There are only so many guest spaces and unassigned spots in any community.

One condominium solved the problem by purchasing a small parcel of land across the street from the building, con-

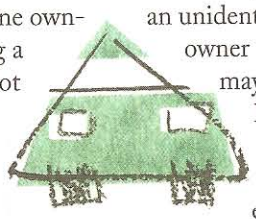
verting it into an additional parking lot. You will need to verify that the association has the authority in the governing documents or applicable statutes to purchase property on behalf of the owners. Be sure to get assistance from the association attorney to determine what approval will be necessary.



Another association re-striped the parking lot and extended the lines to enable owners to park one car behind another. Ultimately, it may be necessary to limit the number of vehicles that can be parked per unit or home, requiring the overflow to park outside the community.

Can the association regulate guest or visitor parking? The community's governing documents usually give the board the authority to control unassigned parking spaces and to make rules and regulations related to temporary, short-term parking. The board can prohibit parking on the lawn, in an emergency zone, in front of a fire hydrant or anywhere that blocks a sidewalk, another driver's view or an emergency vehicle's access.

Can the association charge a fee for guest or visitor parking? The right to charge a fee would have to be in your governing documents. Also, check with the association attorney to ensure such a fee isn't prohibited by state law. Determine when the fee would be charged. For example, there might be a fee for overnight parking in a guest space, but not for a guest visiting for the evening or the day. Before adopting rules, analyze the situation carefully. Will the rule punish the good guys? If only one owner is causing problems, adopting a rule affecting everyone would not be the best solution.



Can the association prohibit long-term parking or vehicle storage in assigned parking spaces? The community is not a vehicle storage facility, so it is not necessary to allow owners to store vehicles over long periods of time. This is usually more of an issue when residents spend part of the year in another location.

Require vehicles to be fully operational, with current registration and tags. While it's possible to prohibit vehicle storage, this could punish responsible owners who just happen to be away four months of the year.

If you allow vehicle storage, make sure owners leave car keys with the association, a family member or a trusted neighbor so the car can be moved in an emergency or to maintain or repair common elements.

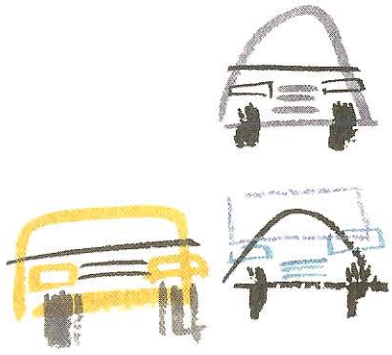
How should the board handle owners who like to repair or restore their cars on association property? You can adopt rules that prohibit car repairs, except for jump starting a dead battery or changing a flat tire. Or you can restrict repairs to the garages. Spilled oil and other fluids damage the parking lots and create hazards. Noise also can be a problem.

How does the board know if a car belongs on the property? The board can adopt a rule requiring vehicles to be registered with the association so you know whether vehicles belong to residents. You can use decals, but don't put the unit numbers or addresses on them. Use arbitrary numbers, a symbol or a color scheme instead. The same caveat applies to numbering spaces. Putting a unit number on a parking space is an advertisement for unoccupied units.

If you are not using decals, your rules can require residents to provide the association with the make, model, color and license number for any vehicle parked in the community. Another option is to provide parking passes for residents to display on visitors' dashboards.

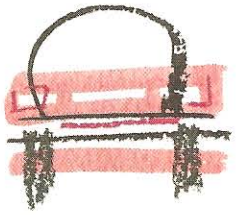
You can place a violation notice on an unidentified vehicle, asking the owner to contact the association. It may be possible to have the vehicle towed. If an unknown vehicle is unclaimed and unmoved for an extended period, report the car to the police as suspicious or abandoned.

If a car is improperly parked, can the board have it towed? Towing can be used to enforce parking restrictions,



but the board should research the matter thoroughly before using this option. Towing is regulated by state statutes and local ordinances so your policy must meet all statutory requirements to avoid liability for removing and storing vehicles. Before contracting with a licensed towing company and posting the necessary signs, be sure the board adopts a rule authorizing towing as a means of enforcing parking restrictions. You will need clearly written parking restrictions so everyone knows what constitutes a violation.

Can the board tow a vehicle parked on a public road? Many association documents prohibit overnight parking on the community's privately owned roads, but grant no authority to tow a vehicle from a public road. If you have public roads and the documents prohibit overnight street parking, you can bring legal action to enforce the documents, even if you can't tow.



If street parking blocks access by emergency vehicles, contact the local police or sheriff's department for enforcement. The same will be true if city or county ordinances regulate overnight street parking.

Also, vehicles parked across sidewalks, impeding pedestrian access and forcing bicyclists into the street, violate easement rights and create dangerous situations. These are grounds for enforcement.

Is an association required to designate handicap parking spaces? Most community associations are governed by the federal Fair Housing Act, which requires the association to allow an owner or resident to make reasonable modifications to the common areas to accommodate a mental or physical dis-

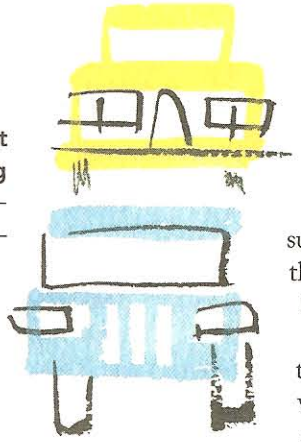
ability at the expense of the requesting individual.

A resident may request a space closer to his or her unit as an accommodation for a handicap. When parking spaces have been permanently assigned to particular units, the association can't take them away to give to another resident. Reassignment can only occur if an unassigned guest space is available near the resident's home, or if another owner voluntarily agrees to an exchange or reassignment.

An association is generally not required by the Fair Housing Act or by the governing documents to provide unassigned designated handicap parking spaces.

However, for associations with public facilities, such as golf courses or restaurants, the Americans with Disabilities Act requires designated handicap spaces near the entrance to the facility.

Are owners allowed to erect carports or construct garages over their parking spaces? Unless there is specific language in the governing documents that authorizes such a change by an owner, this would be considered to be a material alteration to the common elements or common area.



Your governing documents and your state's statutes will determine whether the board can approve the project or whether a vote of all association members is required. Depending on the size and condition of the parking space, it might not be possible to add carports, regardless of approval. Who will maintain the carport? Who will insure it? These issues should be resolved in writing, as a covenant running with the land, before a project is approved.

Sadly, parking controversies can lead to conflict among neighbors, animosity between residents and board members and even violence, but you can take steps to prevent such bitter outcomes. Define the parking-related problems you experience, and consult with your association attorney to determine what rules you can modify or develop to resolve the issues.

You can minimize misunderstanding and hostility by developing reasonable, enforceable rules, explaining your rationale to residents and doing everything you can to encourage awareness and compliance. You'll probably encounter a few potholes along the way, but your community will be better for the effort. **cg**

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