

TEXAS OCCUPATIONS CODE

CHAPTER 2308. TEXAS TOWING AND BOOTING ACT

Authorizing the towing of a vehicle, while seemingly a simple matter, it is one of those things that can become a time consuming and expensive legal issue if you fail to comply with applicable laws. In addition to Texas Property Code, Section 92.013, requiring written notice of towing policies to be provided to the resident at the time the lease is executed, Texas Occupations Code, Chapter 2308, the Texas Towing and Booting Act governs unauthorized vehicle towing. While we recommend reviewing the whole Texas Towing and Booting Act, the following are a few selected sections of the Texas Towing and Booting Act that you should be familiar with before entering into a contract with a towing company:

1. The Apartment Parking Facility Owner can be held civilly liable for violations of the Act.

§ 2308.404. CIVIL LIABILITY OF TOWING COMPANY, BOOTING COMPANY, OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER.

- (a) A towing company, booting company, or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:
 - (1) damages arising from the removal, storage, or booting of the vehicle; and,
 - (2) towing, storage, or booting fees assessed in connection with the vehicle's removal, storage, or booting.
 - (b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner, towing company, or booting company to recover under Subsection (a).
 - (c) A towing company, booting company, or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for \$1,000 plus three times the amount of fees assessed in the vehicle's removal, towing, storage, or booting.
2. It is the Apartment's responsibility to insure that the proper towing signs are posted and provide written verification to the towing company that all the required signs have been posted.

§ 2308.255. TOWING COMPANY'S OR BOOT OPERATOR'S AUTHORITY TO REMOVE AND STORE OR BOOT UNAUTHORIZED VEHICLE.

- (a) A towing company that is insured as provided by Subsection (c) may, without the consent of an owner or operator of an unauthorized vehicle, remove and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) the towing company has received written verification from the parking facility owner that:

(A) the parking facility owner has installed the signs required by Section 2308.252(a)(1); or

(B) the owner or operator received notice under Section 2308.252(a)(2) or the parking facility owner gave notice complying with Section 2308.252(a)(3);

3. Circumstances the Apartment can have a vehicle towed.

§ 2308.251. PROHIBITION AGAINST UNATTENDED VEHICLES IN CERTAIN AREAS.

- (a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to Subsection (c);

(4) does not display the special license plates issued under Section 504.201, Transportation Code, or the disabled parking placard issued under Chapter 681, Transportation Code, for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person; or

(5) is leaking a fluid that presents a hazard or threat to persons or property.

- (c) If a government regulation governing the marking of a fire lane applies to a parking facility, a fire lane in the facility must be marked as provided by the regulation. If a government regulation on the marking of a fire lane does not apply to the parking facility, all curbs of fire lanes must be painted red and be conspicuously and legibly marked with the warning "FIRE LANE--TOW AWAY ZONE" in white letters at least three inches tall, at intervals not exceeding 50 feet.

§ 2308.253. UNATTENDED VEHICLES ON PARKING FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES.

- (a) This section applies only to a parking facility serving or adjacent to an apartment complex consisting of one or more residential apartment units and any adjacent real property serving the apartment complex.
- (b) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:
 - (1) obstructs a gate that is designed or intended for the use of pedestrians or vehicles;
 - (2) obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;
 - (3) is in or obstructs a restricted parking area or parking space designated under Subchapter G, including a space designated for the use of employees or maintenance personnel of the parking facility or apartment complex;
 - (4) is in a tow away zone, other than a fire lane covered by Section 2308.251(c), that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;
 - (5) is a semitrailer, trailer, or truck-tractor, as defined by Chapter 502, Transportation Code, unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or
 - (6) is leaking a fluid that presents a hazard or threat to persons or property.

Comment: A vehicle may be towed as "unauthorized" provided that the signs required by the Act are properly posted at the required locations and additional signs are posted setting forth any other restrictions. (permit parking only, head in parking only, etc).

4. A vehicle may not be towed for expired license or registration without written notice being delivered to the vehicle owner or sent by certified mail, return receipt requested, regardless of any lease provision to the contrary.

§ 2308.253 (e)

- (e) A contract provision providing for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must be:
 - (1) delivered in person to the owner or operator of the vehicle; or
 - (2) sent by certified mail, return receipt requested, to that owner or operator.
5. The Apartment, as the person who authorized the tow, is a party to a "Tow Hearing" and is subject to a court order to refund the towing and storage fees to the vehicle owner.

§ 2308.451. PAYMENT OF COST OF REMOVAL, STORAGE, AND BOOTING OF VEHICLE.

- (b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the towing company, vehicle storage facility, or parking facility owner or law enforcement agency that authorized the removal shall:
 - (1) pay the costs of the removal and storage; or
 - (2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

Comment: Your towing policies should be written and distributed to all persons who have authority to authorize the towing of a vehicle. Changes and updates in the policies must be provided to all residents pursuant to Texas Property Code, Section 92.013. These policies should be clearly stated in the contract with the towing company. Be sure that all parking lot notice signs and stenciling are maintained and visible. Photographs of each vehicle towed in violation of the policy should be taken by the towing company and a copy provided to you.

Note: The Texas Department of Licensing and Regulations (TDLR) is the State agency that licenses and regulates tow truck companies. TDLR's web site contains an index of all currently licensed tow truck companies, fines issued to tow truck companies, and current State law related to vehicle towing.