

# SPRINGMAN, BRADEN, WILSON & PONTIUS, P.C.

*Law Offices*  
4175 Harlan Street, Suite 200  
Wheat Ridge, CO 80003

Phone:(303) 685-4633 x 117  
Fax: (303) 685-4637

*Attorneys:*  
Deborah L. Wilson  
Kristi Bunge  
**Karen Kelly-Braem**  
James Foltmer

*[kbraem@sbwp-law.com](mailto:kbraem@sbwp-law.com)*

*Of Counsel:*  
John D. Carver

## HOMEOWNER ASSOCIATION NEWSLETTER – NOVEMBER 2022

**Happy Holidays!** The end of 2022 is now fast approaching and with that comes various end of the year Board meetings, annual meetings, and changing of the guard. These past two years have been rough for Associations and homeowner- first, with the pandemic, and then with significant changes in Colorado laws. Boards have had to change the way things are done over the years, but no recent changes have been as labor, time, and cost intensive as those that came with the passing of **HB22-1137**.

We must pause and ask: Have you updated your collection policy and procedures? Have you updated your contact information for homeowners including email addresses? Are you posting delinquency notices in addition to mailing, texting or emailing? Have you reduced your interest rate on past due accounts to 8% in your collection policy? Are you following (and submitting) our checklist with your delinquent accounts to ensure you are complying with the new laws and protecting your association?

In addition, does your Association have a towing policy? Are you aware of the Nonconsensual Towing Bill that took effect on August 11, 2022? We have attached our July 8, 2022, client newsletter for your reference and are happy to assist you in creating or updating your parking policies and towing rules. Make sure your tow company is compliant and knowledgeable with the new laws. Among other issues, make sure your signage has been updated, that you have tow stickers available to affix to a vehicle with the required language, and that your parking policies are updated so no towing for expired tags occurs.

In an effort to ensure that our office keeps you all updated with changes and that we are aware of changes in your Association, we ask that our clients provide current, updated information related to the Board, current assessments, and current property manager names and contact information. Attached is a form to provide necessary updates to our office. Even if you believe nothing has changed, we ask that you complete and return the form to Haley at [assoc@sbwp-law.com](mailto:assoc@sbwp-law.com) as soon as practicable. We are also attaching additional copies of the collection checklists and collection resolution for your information and use.

As a reminder, associations are entitled to have an attorney attend one meeting per year at no charge. If you would like one of our attorneys to attend a board meeting or annual meeting to discuss the updates in the laws and the collection process generally, please contact Haley at [assoc@sbwp-law.com](mailto:assoc@sbwp-law.com).

We wish you all a safe, happy, and peaceful holiday season.

Our best,

Karen Kelly-Braem, Attorney at Law

**ASSOCIATION INFORMATION UPDATES – 2022/2023**

ASSOCIATION NAME: \_\_\_\_\_

MANAGEMENT COMPANY NAME: \_\_\_\_\_

CONTACT FOR CURRENT LEDGERS: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

PROPERTY MANAGER CONTACT NAME: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

PRESIDENT OF ASSOCIATION: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SEC./TREASURER OF ASSOCIATION: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

ASSESSMENT AMOUNT: \$\_\_\_\_\_ DUE DATE: \_\_\_\_\_

Monthly - Quarterly - Bi-Annually – Annually (CIRCLE ONE)

LATE FEES: \_\_\_\_\_ LATE PROCESSING FEES: \_\_\_\_\_

*[NOTE: Interest rate on all delinquent accounts is capped at 8%]*

DAY OF MONTH THAT MANAGER WANTS STATUS REPORTS: \_\_\_\_\_

METHOD FOR DELIVERY OF STATUS REPORTS – EMAIL – MAIL (CIRCLE ONE)

TYPE OF STATUS REPORT REQUESTED:

\_\_\_\_\_ SHORT FORM: Reports current status of each case only

\_\_\_\_\_ LONG FORM: Reports history of each case including all collector notes

**COLLECTIONS CHECK LIST (unpaid assessments):**

Homeowner's preferred language: \_\_\_\_\_ (if not marked, assume English)

Homeowner notified of initial delinquency on: \_\_\_\_\_ by:

- Certified mail, return receipt requested
- Posting of a copy of the notice at the owner's unit  
AND
- First class mail    Text message OR    Email at \_\_\_\_\_

The Association has provided all notices required pursuant to their governing documents.  
Yes / No

Prior to turnover of the delinquent account, the homeowner was notified of the delinquency and intent to turnover, by certified mail, return receipt.  
Yes / No

The homeowner was offered a repayment plan of 18 months, and at least 30 days have passed since the offer was made with no response.  
Yes / No

Copies of all notices sent to the homeowner are attached to this collection referral request.  
Yes / No

Referral to Springman, Braden, Wilson & Pontius by a majority vote of the executive board on \_\_\_\_\_ (see attached resolution)

The debt is for:

- non-payment of assessments (attorney fees will be billed to the homeowner)
- non-payment of fines (attorney fees will be billed to the Association)
- non-payment of both assessments and fines (attorney fees may be billed to the Association)

Completed by: \_\_\_\_\_ , Association Manager

**COLLECTIONS CHECK LIST (unpaid fines):**

Homeowner's preferred language: \_\_\_\_\_ (if not marked, assume English)

The Association has adopted and follows written policies imposing fines?

Yes / No

**NOTE:** *If your written policies have recently changed, please attach a copy of the policies when submitting the claim for collections.*

Are any of the violations related to health and safety concerns? Yes / No

- If yes, was the homeowner provided written notice informing the homeowner that they have 72 hours to cure a violation? Yes / No
  - If yes, proceed.
- If no, submit written notice immediately.

Did the Association charge late fees? Daily or every other day? \_\_\_\_\_.

**VIOLATIONS OTHER THAN HEALTH AND SAFETY:**

Homeowner was notified, in writing, of violation on: \_\_\_\_\_ by:

- Certified mail, return receipt requested
- Provided 30 days to cure
- Owner requested and was granted an additional 30 days to cure, which expired on: \_\_\_\_\_
- Total fines for the violation do not exceed \$500

The Association has provided all notices required pursuant to their governing documents.

Yes / No

Prior to turnover of the delinquent account, the homeowner was notified of the delinquency and intent to turnover, by certified mail, return receipt.

Yes / No

The homeowner was offered a repayment plan of 18 months, and at least 30 days have passed since the offer was made with no response.

Yes / No

The homeowner agreed to a payment plan and has defaulted on three or more monthly payments.

Yes/No

Copies of all notices sent to the homeowner are attached to this collection referral request.

Yes / No

Referral to Springman, Braden, Wilson & Pontius by a majority vote of the executive board on \_\_\_\_\_ (see attached resolution)

Courtesy of: Springman Braden Wilson & Pontius P.C. June 2022

**COLLECTIONS RESOLUTION OF  
[Association Name]**

WHEREAS the Owner of \_\_\_\_\_ is currently delinquent in payment of assessments in the amount of: \_\_\_\_\_; and

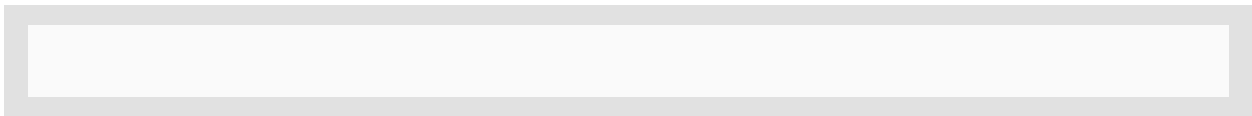
WHEREAS, the Association has complied with all requirements as specified in its governing documents, collection policy and any relevant statute prior to adopting this resolution; and

NOW, THEREFORE, BE IT RESOLVED, by a vote of \_\_\_\_\_ FOR and \_\_\_\_\_ AGAINST, the Board of Directors does hereby approve the commencement of a collections action and related legal proceedings on the aforementioned address.

PRESIDENT'S CERTIFICATION: The undersigned, being the President of the Association certifies that the foregoing Resolution was adopted by the Board of Directors of the Association, at a duly called and held meeting of the Board on \_\_\_\_\_ and in witness thereof, the undersigned has subscribed his/her name.

[Association name]

By: \_\_\_\_\_  
President





**SPRINGMAN,  
BRADEN,  
WILSON,  
& PONTIUS, P.C.**  
Attorneys at Law

## **Nonconsensual Towing Bill - Effective August 11, 2022**

July 8, 2022

Colorado Governor Polis signed the “Nonconsensual Towing bill” on June 6, 2022. It becomes effective on **August 11, 2022**. The text of the Bill is available online at: <https://leg.colorado.gov/bills/hb22-1314> .

By August 11, 2022, housing providers, including Landlords, mobile home communities (MHCs), and residential Community Associations (HOAs) must distribute parking regulations to tenants, and must have proper and compliant signage with the international towing logo. All your signs regarding towing must indicate the parking violations that, if violated, will subject the vehicle to being towed. Before any vehicle is towed, be sure you or your tow carrier gives the vehicle owner 24 hours’ notice when required. The law requires that the tow carrier also post signs and keep adequate records, but it is also important that the housing provider/property owner keep good notes of all actions taken and keep copies of all documents, including any notices given to the owners of vehicles. It is also essential when you contact a tow company/carrier to perform a tow to ask if the company and its employees are familiar and compliant with all the new laws. In the “authorization agreement” that you sign with the tow carrier, make sure the reputable tow carrier agrees to indemnify you from any failure on their part to inform you of your requirements and ensure that they comply with all applicable laws relating to such towing. The property owner must provide authorization to tow within 24 hours of the actual tow.

This new law does not apply to (a) a tow ordered by a peace officer or technician directed by a peace officer in the course and scope of the officer's or technician's duties, or (b) a tow from a parking space that serves a business if (i) the parking space is not in a common parking area; and (ii) the parking space is on commercial real estate.

**“Common Parking Area”** means any part of the following areas that are normally used for parking, such as the side of a street or parking spaces that a property owner does not have the right to exclude other residents of the following from using for parking:

- (a) a condominium,
- (b) a cooperative,
- (c) a multifamily building, which is also known as an apartment complex, with separate living quarters that are rented or leased separately; or
- (d) a mobile home park.

**WHEN A NONCONSENSUAL TOWING MAY OCCUR:**

A tow carrier may perform a nonconsensual tow of a vehicle from private property if:

- I. the vehicle is being repossessed by a creditor with a lien or security interest in the vehicle;
- II. the removal is expressly ordered or authorized by a court order, an administrative order, or a peace officer or by operation of law;
- III. the vehicle blocks a driveway or roadway enough to effectively obstruct a person's access to the driveway or roadway; or
- IV. the tow carrier has received permission to tow the vehicle, within the twenty-four hours immediately preceding the tow, from:
  - a. the owner of or leaseholder of the private property;
  - b. a person subject to the "Colorado Common Interest Ownership Act", if the private property is located within the boundaries of the person's area of operation; or
  - c. an agent of an authorized person, except that the towing carrier does not qualify as an agent with authority to grant permission under this section.

**24-HOUR NOTICE:**

With limited exceptions\*, a tow carrier shall not do a nonconsensual tow from a parking space or common area parking area without the tow carrier or Property Owner giving the vehicle owner or operator the proper 24- HOUR WRITTEN NOTICE. The tow carrier or property owner shall provide the notice by placing a written notice on the windshield of the vehicle at least 24 hours before towing the vehicle with the following requirements: (1) the notice must state clearly that the vehicle will be towed without consent if the vehicle remains parked inappropriately; (2) a description of the inappropriate parking that has caused the notice to be given; (3) the time the vehicle will be towed if it is not moved to appropriate parking, or the inappropriate parking has been corrected; and (4) that continuing to park inappropriately in the same manner may lead to the vehicle being towed without notice.

**\*Exceptions to 24-hour notice requirement:**

- a) If the vehicle owner or operator has received two previous notices for parking inappropriately in the same manner;

- b) if the vehicle is being repossessed;
- c) if tow is authorized by a court order, administrative order, or under direction of a peace officer or by operation of law
- d) if the vehicle blocks a driveway or roadway enough to effectively obstruct a person's access to the driveway or roadway;
- e) if the vehicle is parked in violation of section 42-4-1208 (4) or in reserved parking for people with disabilities without displaying an identifying placard or an identifying plate that is currently valid or has been expired for no more than sixty days;
- f) if the vehicle is parked in or effectively obstructing a designated and marked fire zone;
- g) if the vehicle is occupying without permission or effectively obstructing access to or from an individually designated, rented, or purchased parking space of a resident; or
- h) if the vehicle is parked without displaying valid authorization in a parking lot marked for the exclusive use of residents.

**Importantly, no towing is allowed for EXPIRED REGISTRATION (unless ordered by a peace officer)**

**BEFORE TOWING:**

A property owner with tenants shall issue each tenant a written document containing any applicable parking regulations (either before the regulations are adopted or amended or before the person agrees to be a tenant).

To perform a nonconsensual tow, other than for an abandoned motor vehicle, from private property normally used for parking, the property owner must also have provided adequate signs communicating the parking regulations that subject a vehicle to being towed; and the tow carrier must obtain authorization from the property owner, leaseholder, or common interest community within 24 hours before towing a vehicle from private property. **Notice** of the parking regulations must have been provided to the vehicle operator when the vehicle entered the private property and parked; advising them that any vehicle parked in violation of the regulations is subject to tow at the vehicle owner's expense. The property owner must have posted signage visible and facing the driver (1) at each entryway into a parking area indicating that parking spaces are designated for one or more specified residents and that a vehicle parked without authorization is subject to being towed, and (2) the sign must also contain the "international towing symbol" no smaller than 4 inches by 4 inches and be permanently mounted in a position that is no lower than 5 feet and no higher than 8 feet.

Upon entering into an agreement with a property owner to nonconsensually tow vehicles from the property, the tow carrier shall also post signs that are no less than 1 square foot in size; have lettering not less than 1 inch in height; have lettering that contrasts with the background on which the letters are placed; state "authorized parking only"; include the name and telephone number of the towing carrier; are printed in English; are placed at the entrance to the private property, face outward toward the street, and are visible prior to entering and upon entering the private property; are placed inside the area used for



parking, face toward the parking spaces. If the private property has more than 10 freestanding lampposts on the property, the sign must be posted on each lamppost or posted upright near each lamppost. The signs must not be obstructed or placed in such a manner that prevents visibility and must not be placed higher than 8 feet or lower than 3 feet from the ground surface closest to the sign's placement. The tow carrier shall retain evidence, including photographs of the relevant signs, of giving the notices and disclosures for 3 years after the date of completion of a nonconsensual tow.

A vehicle is "parked inappropriately" when it is parked in a manner that violates the procedures necessary to obtain authorization to park in the lot or space; fails to comply with the property owner's signs or the agreements of the tenants; or violates a statute, rule, ordinance, or resolution of the state or a political subdivision of the state

**AFTER HOOKUP (No drop fees allowed):**

A tow carrier shall not assess a drop charge to release the vehicle after the vehicle is hooked up to the tow truck but before the vehicle is removed from the property. If approached by an authorized person before the vehicle is removed from private property, the tow carrier shall (1) notify the person that it is required to release the vehicle upon request of the authorized person, and (2) upon request by the authorized person, the tow carrier shall stop any tow in progress before the vehicle is removed from private property.

**AFTER TOWING (IOUs for the tow bill):**

The requirements for tow carriers are extensive under this bill, and tow carriers should retain their own legal counsel to ensure full compliance with all applicable laws including photographing, records, signage, notices, announcements, and other requirements of the law. A tow carrier must allow an authorized person to retrieve a vehicle without paying the tow carrier the total amount owed to the tow carrier if the person signs a form affirming that the authorized or interested person owes the tow carrier payment for fees that comply with the statute. The tow carrier may use the form to take reasonable actions to collect the debt, including suing the vehicle owner in court or hiring a collection agency/attorney.



SPRINGMAN,  
BRADEN,  
WILSON,  
& PONTIUS, P.C.  
Attorneys at Law

4175 Harlan St. #200 | Wheat Ridge, CO 80033  
102 S Tejon Street, Suite 1100 | Colorado Springs, CO 80903  
Ph: (303) 685-4633 | Fax: (303) 685-4637  
[www.sbwplaw.com](http://www.sbwplaw.com)

Deborah Wilson, Managing Partner  
Kristi Bunge, Partner | Paul Farrer, Partner | Karen Kelly-Braem, Partner

Of Counsel:  
John D. Carver

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