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Under What Circumstances will Police Officers Enter the Common Areas of a Community Association to Enforce the Law?

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When a crime is committed within the boundaries of a community association, Boards of Directors, without exception, want the police free to enter the Association's private property to apprehend the culprit and to protect the common area of the Association or the property and safety of the residents. But not all Boards of Directors want the police to freely enter the Association's private property to enforce County vehicular registration or licensing requirements within the Association's private streets. Can a Board of Directors have it both ways? Under the law, the answer is yes.

To understand the law on this subject, one must distinguish criminal offenses from traffic offenses and one must distinguish serious traffic offenses from parking, license and other less serious traffic offenses.

Here is what the police can do in criminal cases – subject to constitutional considerations, police have the legal power to investigate any criminal incident, regardless of whether it occurs on public or private property. Similarly, the police may apprehend a criminal suspect on both public

and private property. So, police will enter a community association's common areas as they deem necessary to investigate criminal matters and to apprehend suspects. No consent from the Board of Directors of the Association is necessary for them to do so.

The gray area here, and the area in which different precincts may have different policies, is with respect to minor criminal offenses. For example, some police precincts will neither investigate nor enforce trespass or solicitation violations committed on private property if a community association official or agent reports the complaint, unless that community association has already formally granted permission to the police precinct to enter the Association's private property. Yet the police from the very same precinct will investigate and enforce trespass or solicitation incidents at individual residences reported by residents even when the community association has not formally granted permission to enter the private property of the community association because the police consider these incidents as potentially more serious. Some police precincts will enter common areas without

prior permission from the Board to investigate felonies but not less serious misdemeanors.

If the incident is a traffic incident, a different rule applies. With the exception of incidents of suspected driving under the influence, hit and run, or reckless driving, police will not enter private property, including community association common area, without consent from the Board of Directors. Thus, absent the consent of the Board of Directors, the police are not authorized to investigate or enforce County regulations concerning parking, registration or similar traffic offenses within the common area of the community association.

A community association Board of Directors may want the police to patrol and enforce the County's minor traffic and non-moving regulations within the community association's private property. If so, the Board should send a letter of permission to the local police precinct to patrol its common area. If the police have such permission, they can and often will enforce any violations they observe in the course of their patrols, including license and registration violations or violations of inspection and county sticker requirements.

A rough rule of thumb, then, is that the police will enter common area to investigate criminal incidents and serious moving violations. They will not enter or patrol for minor moving violations or non-moving violations without prior written consent from the community association. To understand how the precinct serving your community association deals with entry for less serious criminal incidents, we recommend that you contact its public information officer.

If you have any other questions or comments about this issue, please contact any one of the community association attorneys of the firm.