

Legal basis governing parking in a private parking space

Parking in a private space is governed by the law of property (a right in rem), which also protects the tenant of a parking space.

The unauthorised occupation of a parking space constitutes interference with possession and may, in certain circumstances, amount to trespass.

Under Art. 928 of the Swiss Civil Code (CC), a possessor whose possession has been interfered with may bring an action against the person responsible, even if that person claims a right over the property (para. 1). The action may seek an end to the interference, an injunction against further interference and compensation for loss (para. 2), with reference to Art. 41 of the Swiss Code of Obligations (CO).

Interference with possession

The action of a third party who obstructs or prevents rights holders from using their parking space causes a loss.

Extent of the loss

The loss caused may be assessed according to its duration, recurrence and direct impact on the possessor, as well as the possessor's own costs. Based on the relevant case law and where there is no detailed proof of the amount of the loss, Security Parking recommends that its clients claim compensation of CHF 60 to CHF 80. A higher amount may be claimed in the event of repeated infringements or particular costs incurred by the possessor.

Possessory action

Art. 928 CC allows the possessor to bring legal proceedings or to act directly. Under the intervention mandate with Security Parking, the action consists of claiming compensation for the loss caused pursuant to Art. 41 CO.

This is a direct civil procedure relating to interference with possession, without criminal consequences. In the event of non-payment, debt enforcement proceedings may be pursued until an objection is lifted by a judge, with additional costs. In that event, Security Parking must prove its mandate and the interference with possession, for example by means of a photograph showing the vehicle and the signage in place.

Criminal proceedings

An owner who has obtained a judicial parking prohibition may, in addition to the civil measures described above, file a complaint with the judge, who may issue a penal order imposing a fine, generally between CHF 150 and CHF 2,000. Security Parking does not initiate criminal proceedings; the owner may do so if desired.

Informative summary - Swiss law