

License swipe at gated communities may be illegal



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Private residences sign on gate

(Photo: Jupiterimages, www.jupiterimages.com)

I thought I was the only person who didn't want my driver license swiped at the entrance of some gated communities in Lee and Collier counties.

I have no idea what these people are doing with the information they are obtaining from the magnetic stripe on the back of my license. Are they keeping it secure? Are they selling it? Is it going to some boiler room in a foreign country where someone is making up a fake ID to steal my identity?

I'm not being paranoid, honestly. And neither was the Legislature when two years ago it passed a law prohibiting private entities from swiping driver licenses and state IDs except in a few special circumstances — one of them not being visiting your friends.

Or, as in the case of William Heflin and Sears, servicing his appliances.

Heflin purchased all of his appliances at Sears — two refrigerators, a freezer, washer, dryer, microwave, range and dishwasher — and got warranties for all. But when he wanted the appliances serviced, Sears' repair technicians wouldn't come into the gated community where he lives because they wouldn't turn over their licenses to be swiped.

Heflin was furious and felt he should have been warned of this prior to the purchase. "They should notify the public," he said.

But I don't agree. It would be different if they were selling a gas stove to a customer who only had electric. But how could they possibly know your homeowner's association was going to violate a Florida statute?

And swiping driver licenses does seem to be a violation of Florida Statute 322.143, according to my reading. But, as I'm not a lawyer, I asked Jennifer Delaney, an attorney with the Law Office of Kevin F. Jursinski & Associates, what she thought.

"There are no cases citing this," Delaney said. The regulation is new, going into effect in 2013. But Delaney agreed the law appears to prohibit swiping a license without an individual's consent.

The statute doesn't prohibit asking for identification and writing down the information, Delaney said. It just prohibits swiping — reading electronically encoded data from the magnetic strip or bar code — unless the person agrees to do it.

One reason there may be no case law is that it carries a civil penalty. And the homeowner who was denied the service would likely have to complain. Heflin's not blaming his HOA for the practice. In fact, he prefers living in a gated community with tight security.

"All new upscale communities will be asking for a driver's license. That's the way it is," Heflin said he was told. Sears told him there were seven communities in Florida they won't service because they insist on this practice.

Heflin said he found an appliance repair company whose employees don't mind getting their licenses swiped. He canceled his contract with Sears and said he won't ever buy appliances from them again.

I guess that's one way to handle it. But I really think gated communities need to quit with the swipe. Write down the person's name and where they are going. Issue them a pass. But there seems to be no reason to invade a person's privacy and risk the theft of their identity on the outside chance they might commit a crime in your development.

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