

## **Community Association Transition Litigation: “Who ya gonna call?”**

Article By:

John S. Prisco

---

It's no secret that litigation can be a costly and stressful process, and this can be particularly so for community associations finding themselves facing transition litigation following the transfer of control over the community from the sponsor/developer to the unit owners. The costs can quickly become overwhelming, leading many potential claimants, including community associations, to seek the least expensive counsel they can find. However, focusing solely on hourly rates can have disastrous consequences for any litigant. If your community association is seeking transition counsel, it is critical to consider a number of factors to ensure that your resources are well spent, and your litigation efforts are successful.

The most critical factor to consider when seeking transition counsel is experience. You want to make sure your potential attorney has experience bringing construction defect or other transition claims and understands how to navigate the legal landscape of these matters. You should also consider their past cases and how they were resolved. Were they able to secure a favorable outcome for their clients? What was their strategy? What were their strengths and weaknesses? These are key questions to consider and ask when seeking out transition counsel. Resources are limited and your community association shouldn't be the training ground for an inexperienced attorney.

Beyond experience, you want to ensure that the attorney or firm's fee structure is the right fit for your community and your action. There are a number of fee structures to consider including hourly, full contingency, or hourly-contingency hybrids. An hourly fee structure is straightforward—the client pays an hourly rate and retains the full amount of any recovery. In a full contingency fee model structure, the client's out-of-pocket expenses are generally limited to costs such as filing fees, expert costs, and the like. With a full contingency fee, the attorney's fees are paid based upon a percentage of the total recovery in the litigation, which keeps funds with the association while litigation is pending. A hybrid model involves a lower hourly rate coupled with a lower percentage contingency fee. This type of structure works for communities that have funds to devote to litigation, but also wish to minimize its out-of-pocket expenses during the tenure of the action.

Once you have lined up a number of potential law firms that have the right experience and fee options, it's time to drill down to the nitty-gritty of counsel's litigation approach. How your attorney intends on prosecuting your claims will ultimately determine the success or failure of your community's litigation. Does your potential counsel intend on taking a “shotgun approach” and

simply asserting claims against any and all contractors and professionals that were involved in the design and construction of your community, or will they take a more deliberate and concise approach? A shotgun approach can be time-consuming, expensive, and may not lead to the desired outcome. Your attorney must have a well-thought-out strategy that prioritizes your community's needs while ensuring a return on investment. A more deliberate and concise approach may involve investigating the details of your case prior to filing suit to determine the specific parties responsible for the issues at hand. This approach will ultimately lead to better outcomes for your community in the long run.

Beyond experience and strategy, it's essential that your counsel understands and prioritizes your community's needs and goals. For example, does your counsel know if you want to prioritize a settlement over a trial? Is your counsel focused on ensuring your community sees a return on its investment, or simply winning at all costs? A judgment is only worth the paper it's printed on unless you can recover against the liable parties.

It's also important to consider the reputation and track record of any potential transition counsel. You want to work with an attorney or law firm that has a strong reputation for success in transition litigation and that has a track record of achieving positive outcomes for their clients. You can research potential firms online, read reviews, and ask for references to get a better sense of their experience and track record. Another great resource is the Community Association Institute's Professional Services Directory where you can search by type of service and region.

Transition is a key time for community associations, and selecting the right counsel is critical. During this period, there are many important legal decisions that need to be made, including transitioning from developer control to owner control, assessing potential transition claims, warranty claims, and beyond. Your transition counsel should be experienced in handling these types of cases and have a deep understanding of the legal issues that arise during the transition process. Moreover, the transition period is a time when the developer is still involved in the community, and it can be difficult to balance competing interests. You may have to negotiate with the developer for repairs or other remedies, which can be challenging. A skilled transition attorney can help you navigate these complex issues and advise you on the best course of action for your community association. With the right counsel on your side, you can feel confident that your community association is well-equipped to handle the challenges of the transition period and to move forward successfully.

Selecting the right transition counsel is a critical decision for community associations. While it may be tempting to focus solely on hourly rates, it's important to consider a number of factors, including experience, fee structures, litigation approach, and reputation. By taking the time to research potential attorneys and law firms, and to ask the right questions, you can feel confident that you're making the best possible decision for your community association and its future.

COPYRIGHT © 2024, STARK & STARK

---

National Law Review, Volumess XIII, Number 128

Source URL: <https://www.natlawreview.com/article/community-association-transition-litigation-who-you-gonna-call>