

The Dollars and Sense of Transition Litigation – Retaining the Right Counsel

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It may come as no surprise that litigation can be costly. Many times, potential claimants seeking to temper their litigation costs look for the least expensive counsel they can find. But in the end, are litigants truly saving money by focusing on the lowest hourly rate?

Retaining the wrong attorney simply because that attorney or firm offers the lowest rates can have devastating consequences for any litigant. When your community association is seeking transition counsel, it's critical to consider a number of factors to ensure your resources are well placed and well spent.

The most critical factor to consider when seeking transition counsel is experience. Does your potential attorney have experience bringing construction defect or other transition claims? What were the outcomes of those past matters and how were they resolved? These are key questions to consider and ask when seeking out transition counsel. It is important to keep in mind that resources are limited, and your community association should not be the training grounds 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 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.

Now that your community association has 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"? Would they simply assert claims against any and all contractors and professionals that were involved

in the design and construction of your community? Or would they take a more deliberate and concise approach? Does your counsel understand and prioritize your community's needs? Is your counsel focused on ensuring your community sees a return on its investment or simply winning at all costs? After all, a judgment is only worth the paper it's printed on unless you can **recover** against the liable parties.

Transition is a key time for community associations and selecting the right counsel is critical.

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