

# What Community Associations Should Know from HOA Attorneys

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**Maintenance, repairs, upkeep, and enforcement of rules are all in a day's work for a community association – now one of the most common housing arrangements in North Carolina.**

To date, nearly 27% of the state's population lives in some type of single-family home, townhome, or condominium development governed by a homeowners' association, also known as an HOA.

With its explosive growth and abundance of housing options, from new affordable homes to multimillion-dollar gated neighborhoods, the Triangle has become a hotbed for these types of planned communities. In response, the firm recently announced a dedicated team to help new and established association boards of directors and managers in Raleigh, Durham, Chapel Hill, and surrounding areas navigate the challenges of running an HOA.

The Triangle Team consists of litigator Amy Wooten, business and community association attorney Madeline Lipe, real estate attorney James Todd, and creditors' rights attorney Thomas Wolff. Each has a unique perspective to serve and guide a community association in all stages of development and through all types of disputes and conflicts.

I recently asked my colleagues to share the one thing that is most important for HOAs to know. Here's what they had to say:



***"I'd say that one of the most important things for community associations to know and appreciate is that risk management is key!"***

- Amy Wooten, Litigation Attorney

It is critical that community associations take a proactive approach to manage risks that they may encounter for many reasons. One of those reasons is that proactive risk management can mitigate the chances of litigation being initiated against a community association or better position the community association to defend itself when litigation ensues. It can also better position a community association to handle the financial hardships and other stressors that often arise when a community association finds itself in a position where it is the party that needs to initiate litigation. In short, a community association's risk management strategy should include erring on the side of seeking legal

guidance and counsel early on when a potential dispute or legal concern arises. Doing so will require the community association to invest in legal fees. However, it's been my experience that those dollars are well spent more often than not. Whereas, skipping that investment, among other negative consequences, tends to result in community associations incurring substantial legal fees that could've been avoided or significantly reduced had they been proactive in seeking counsel.



***"When faced with a community association question, the starting point is almost always the same... start with the governing documents."***

- Madeline Lipe, Business and Community Associations Attorney

A community association's governing documents (declaration, articles, and bylaws) provide the foundation for understanding the role of the community association. The community association's purposes will be set forth in its governing documents, which, together with the applicable North Carolina statutes, outline the association's responsibilities, define owners' rights and obligations, and generally set forth the framework of the community. Accordingly, it is important to know what the governing documents say so that there is an understanding of the association's authority, obligations, and limitations.



***"Community Associations are empowered, guided, and constrained by the real estate covenants that create their communities."***

-James Todd, Real Estate Attorney

It's essential that community associations understand the authority and limitations contained in their covenants. We frequently come across community associations that have been operating a certain way "for as long as anyone can remember" without understanding why. We can help analyze and amend the covenants - whether it's a review of decades-old covenants that don't serve the current needs of the community or proposed amendments to align the covenants with a long-standing practice. A community association's covenants are the framework in which it operates - we can help ensure that framework matches the needs of your community association."



***"One of the most critical things to remember when dealing with delinquent accounts is to take action early and be consistent when enforcing a homeowner's payment obligations."***

- Thomas Wolff, Creditors' Rights Attorney

It can be much easier for homeowners to cure their arrears when it is still manageable and relatively low. Reaching out early, and being willing to work out a reasonable payment plan, can help avoid larger issues before they develop. However, there will always be those accounts that may prove troublesome and ultimately require legal assistance. In those instances, it is still important to reach out to the association's legal counsel to take swift action in order to preserve its right to repayment and place a lien on the delinquent homeowner's property. In most cases, the lien will cover not only the past due assessments, interest, and other charges but also the association's legal fees. Acting quickly helps place the association in a prime position for repayment and makes the growing debt hard to ignore for the homeowner - especially if they want to sell or refinance their property. By acting early and dealing with delinquent accounts consistently, an association can help increase its chances of recovery.

Not every conflict in a community association may need an attorney, but having qualified legal representation

can go a long way to ensure the health and maintain peace within your HOA. Our Triangle Team, backed by our full service, state-wide Community Associations Practice, is ready to assist your community association needs.

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