



October 1, 2025

NOWACKHOWARD

COMMUNITY ASSOCIATION ATTORNEYS

VIA E-MAIL ONLY

Attn: Board of Directors
Weatherstone Community Association, Inc.
c/o Carter Communities, Inc.
711 Cedar Creek Way
Woodstock, GA 30189

Re: On-Street Parking and References to Declarant In Declaration

Dear Board of Directors:

You asked our firm to advise whether Weatherstone Community Association, Inc. ("Association") should take action to enforce the restriction against on-street parking in the Weatherstone in Article V, Section 5 of the Declaration of Protective Covenants for Weatherstone ("Declaration").

Since the Association arguably lacks jurisdiction over the public streets in Weatherstone, we advise against towing, imposing fines or taking any other action to enforce violations of the private restriction against on-street parking in Article V, Section 5 of the Declaration. While this area of the law is unsettled in Georgia, the Association could be subject to legal liability for taking any action to enforce the on-street parking restrictions on the public property that it does not own or control.

Furthermore, in *Hardin v. City Wide Wrecker Service, Inc.*, a towing company was held liable for conversion for towing an "improperly parked" vehicle from a public street in a townhome community at the direction of the townhome association's authorized representative. The Georgia Court of Appeals held that the towing company did not have the authority to tow the vehicle from the public street because the authorized representative from the townhome association did not have the statutory authority to tow vehicles from public streets pursuant to O.C.G.A. § 40-11-3. At the time of the towing, O.C.G.A. § 40-11-3 generally only granted peace officers, law enforcement officers, and employees of the Department of Transportation the authority to tow vehicles from public streets.

Although and the liability of the townhome association was not at issue in the *Hardin* case and the specific statute at issue was later repealed in 2019 and replaced with a new statute regarding removal of unattended vehicles from public property, we believe a community association *could* be liable if it tows a vehicle from a public street based on the decision in *Hardin* and the current statutory law.



Accordingly, we recommend that the Association refrain from taking enforcement action and instead report all on-street parking issues to the City of Woodstock. That is the most cautious approach.

You also asked our firm whether the references to “Declarant” in the Declaration can be removed. These references are generally no longer relevant and can be removed since the Declarant’s rights in the Declaration have terminated. However, in order to remove the references to Declarant throughout the document, the Declaration would need to be amended with the approval of the Owners of at least two-thirds of the Lots in accordance with Article XII, Section 4 of the Declaration.

Sincerely,

NowackHoward, LLC

/s/ William H. Gourley III
William H. Gourley III, Esq.
Senior Partner

