

18<sup>th</sup> DISTRICT COURT OF ARAPAHOE COUNTY COLORADO  
“JUSTICE DENIED”©

By James W. Burneson  
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**CHAPTER 14 A. Dirty Tricks By Property Managers, Lawyers And  
Incompetent Directors**

**HOMEOWNERS ASSOCIATION BOARD OF DIRECTORS  
GUIDE TO  
MANAGING A HOMEOWNERS ASSOCIATION**

By

**Jim Burneson**

**This guide was developed over a ten-year period by a membership who tried to bring honest representation and return to following and enforcing homeowner’s rights by the covenants and bylaws. Efforts to influence a Board of Directors of a Homeowner’s Association to abide by these recorded documents were defeated by the actions described herein.**

**The Board of Directors, Association Attorneys, and Property Management Companies took deliberate actions or non-actions to defeat any exposure of their wrong actions and advice acted upon by previous directors. These actions were performed willfully and wantonly in a deliberate effort to hide and perpetuate their misconduct. The management companies, and lawyers who were contracted to provide services and claimed to represent the Association in truth represented themselves first and the Board of Directors next and that leave no one to represent the membership.**

**This guide is written to emphasizing how to directly control and manipulate the rules and meetings to screw the membership. If you want to effectively stop these actions, then take the opposite actions described herein and you can protect the membership from being harmed.**

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## Election of Board of Directors

Election of the Board of Directors is the first step towards control of an Association. A group of members decide to control the affairs of an Association get together and chose which members would be good candidates as directors. What makes a good candidate is different from what makes a good board member. A good director will submit to peer pressure and not represent what is best for the Association WHO usually gets elected. A member who is new to the Association say 6 months to a year. Someone with no business experience and no legal experiences is the best candidate for the purpose of control. An owner husband and wife team who wants to be socially acceptable to the “In-Group” of the Association. “In Groups” exists in all association as political group. They believe their services and input is essential to the good of their Association, venders’ lawyers, and management companies.

### **A. Tricks of an election**

1. **Proxies** are the first step to buying an election. The management company prints proxies that suggest everyone must mail their proxy to the management company whether they are going to the scheduled annual meeting or not. Include the statement “If you attend the meeting you can retrieve your proxy and vote in person”. Make sure the proxies are not assigned to a neighbor or any friend who would attend the meeting and vote as instructed by the absent member. The proxies should only provide for assignment to a proxy holder by name like Board of Directors or a named Director with no instructions on how to vote. Make sure the proxies are mailed to the management company and not the secretary of the association. This way the management company will open all the proxies’ days before the Annual meeting and tell the Board of Directors how many proxies are assigned to the board members. They will count how many are addressed to the Board of Directors, which can be voted any way the Directors want. If you have the right kind of Management Company, they can “lose” any proxies that are assigned to vote against the In-Group’s choice of candidates. (Hard to check up on)

2. **Hold the election** during the holidays when most members will be away on vacation like a ski trip or visiting a family out of state. Bad times to have elections are September and October and February. High percentage of homeowners is in town.
3. **Whoever the candidates** are running for election always have a few extra names ready to nominate from the floor at the annual meeting. If the board members have enough blind proxies, these names can be nominated at the last minute. This will split the votes between declared candidates with names nominated from the floor. A small block of proxy votes can elect three people spread over a field of 6 at the last minute.
4. **On the evening of the annual meeting**, say an hour before, hold an earlier meeting, and invite the In-Group of members and a select group of owners to meet with the selected candidates favored by the In-Group. This early informal meeting will garner more votes at the official annual meeting. Everyone likes to feel they are in a special group with everyone else on the outside. Those members invited to this early meeting will vote as requested as a block for the in-group candidates.
5. **The In-Group should control** the committee that counts the votes. Many times a ballot maybe in question as to how it is marked or a proxy was not signed properly and the right committee members can steer the vote to the in-groups candidate or declare the vote invalid if it is for an opponent.
6. **Don't let the candidates speak more than a minute** about themselves. This is a sensitive time when a candidate with a good speaking ability may open certain areas of interest that the in-group doesn't want questioned. Most owners will not question rules if they are presented to be fair to everyone. One minute speech will limit a candidate who is a critic of the in-group's board past actions. I know of 45 seconds being used to censure a candidate's speech.
7. **There are certain requirements of an Annual Meeting.** The Board is supposed to present the financial statement to the membership. If there are problems with the financial statements over some expenditures try the following. Have the Treasurer come up with a reason to be late to the meeting and have another Board member read a brief summary of the financial statement and explain this board member can't answer any questions since he is not the treasurer. The treasurer will answer the questions when she/he arrives later in the meeting. As the meeting, goes on the Treasurer should arrive late and sit out in the audience as if she/he does not want to interrupt the business at hand. The membership will forget to ask embarrassing questions on expenditures and the meeting will be over till next year. If a member does want to question something he can be told to put it in writing address it to the Treasurer and it can take months to answer. A new way to try and avoid presenting a financial report is to give out a one-page notice with lots of percentages of costs and expenses to confuse the membership. This seldom works unless you have a really dumb audience.

**8. Parliamentary procedures** is important to know but don't get trapped into Robert's Rules of Order. If your meeting can be conducted without, following Robert's Rules a Board of Directors can control the homeowner's meeting. Once a group of owners start quoting Robert's Rules at a meeting the Board of Directors can lose control to the owners who can then run the meeting. Demands can be made for answers that could be damaging to the board.

**9. Certain members may attend with complaints**, which they demand to be heard. Let them talk for a standard time set for everyone like three minutes and then don't let them speak again. The Board of Directors will take whatever complaints have been made under advisement and will get back with the membership later. Later can mean forever. Handle the individual complaints outside of the meeting by phone at best and in writing only when extreme actions are threaten by an owner. If you have the right kind of attorney representing the association the complaining owner can be referred to the attorney who will delay the complaint. Remember delay of complaints is the best way to solve a complaint. Otherwise, the board may be forced to take action on a complaint.

**10. Postpone meetings** until a slate of Board Candidates acceptable to the In-Group can be assembled.

**11. Attach the preferred candidate's** names to the ballet and leave troublesome candidates as a write in.

### **Monthly Board Meetings**

**1. These meetings** are scheduled for a year in advance by choosing a day of each month like the first Tuesday or third Thursday of every month. This relieves the necessity of giving formal notice of each meeting.

**2. Make the meetings dull and boring.** Some Association begins the meetings with an open form. Owners are allowed to express complaints and ask questions of the board. Reduce the time per member to say 3 minutes. As the questions are asked and complaints are made refer them to a board member and explain, the subject will be reviewed at a later time. Someone will get back to the complaining owner, which can be delayed.

**3. There is old business and committee reports and new business.** If there is some issues the board wants to discuss in private like a lawsuit or employee problem this can be discussed in an executive session. If the membership is not aware of the rules you might get away with voting on issues discussed in private during the executive session. Again, if the membership is not aware of a vote to perform certain actions and it will not be recorded in the minutes of the regular board meeting and the membership will not know about the vote. Careful how this is handled since voting in the executive session is not legal and all issues discussed are supposed to be reported in the regular minutes of the public meeting when reconvened. After the executive session is closed and the board opens the public meeting at that time, all subjects discussed are supposed to be reported.

But who's to know what went on in executive sessions? If the board has some loose ends they forgot to vote on they might try to cover up by claiming they voted on the issue in the executive session and forgot to include it in the minutes of the public meeting.

## **Financial Reports**

- 1. It's important to schedule the monthly board meeting as early in the month as possible.** This will give an excuse for the financial statements to be late for that month's meeting because the bank statements have not been received by the bookkeeper. If the financial statement is not reviewed the following month, you can delay approval by the board for several months. If you do it right, you could delay the financial statements for months and this means it's too late for any member to question the spending. Financial statements distributed on time can expose misspending with time for corrections by the membership and cause problems.
- 2. Always, print a summary financial report in the monthly newsletter.** How the report is summarized can hide knowledge of how the money is being spent. Lump all expenses into as many major categories as possible to reduce the number of individual lines. Example: group the legal fees in with administration and all kinds of legal costs can be hidden. Some HOAs have made the mistake of printing the entire financial report in the monthly newsletter. To stop this full disclosure reporting, suggest the HOA will save money on the printing by summarizing the financial statements.
- 3. Who does your reports is important to the control of a HOA.** If a management company can do your books, it will keep control over the information and what is being spent on what. If a public accountant keeps the books, it may lead to full disclosure and cause the books to be open to the membership upon request. This is bad and will reduce the control by the Board of Directors. A management company can play games with the reports provided the membership and what is reported to the board. If a public accountant is used it may reduce the cost of a CPA audit and prevent kickbacks to the management company. The management company should provide some kind of gift to the Directors. The management company could schedule a special dinner for the Directors and wives at the management's expense. Spread the income to some who have made it possible to earn money in the HOA business.
- 4. Books and Papers of the Association is a subject that must be controlled by the In-Group Board of Directors.** In all HOA Covenants and Bylaws, the membership has the right to review the books and papers. There are many ways to limit the members' review. First keep the books unfilled and in a boxes with no order. Its hard to determine what's missing if no order can be found to the books. The right kind of Management Company can keep refusing owners demands to review the books for months. The members can claim their rights to see the books but excuses can be given to deny and delay.

5. **Accounting legal fees against homeowners.** This is where the management company bookkeeper becomes a very important part of controlling income and the membership. The lawyer hired to represent the Association is there to represent the interests of the Board of Directors, Management Company and last of course the membership. When a member falls behind in assessments the HOA should have some standard policy of collection after say 90 days in arrears so the account is handed over to the lawyer. The lawyer will send out a standard letter of notice of collection (Costs \$75.00) and the member is now in the hands of a lawyer. If the member complains to the board all need be said is it's between the member and the lawyer the Board of Directors is no longer involved.

This removes any approval by the board and the homeowner is now at the mercy of the lawyer who can charge the member anything he wants to. Without board of director's approval of the legal fees, it removes the Board of Directors from being implicated in the charges of the Attorney. The Board of Directors will pay the lawyers fees by a monthly invoice. The legal charges against an individual each owner will be added to his/her assessment account and the members can't complain about the amounts charged. Then the lawyer will threaten the delinquent member to pay the legal fees without the owner knowing it is a reimbursement back to the Association previously paid the lawyer. The member is held responsible to pay whatever the lawyer charges, the legal fees are paid first, and if there is anything left over it will be applied to the member's assessment account. I will provide a standard form used by a local law firm to contract the services of a lawyer and an HOA. In this contract, the payments from a member on his membership account will be paid towards the legal fees and all other legal costs and any money left over will apply to the member's assessments that are in arrears.

This means the delinquent member will never get ahead in his payments and will forever be in arrears, which gives the lawyer a chance for more income. If the homeowner objects and fights the lawyer's efforts like writing a letter of protest the lawyer's answer will be charged to the home owner for writing a letter that needed an answer. Legal fees for collection can exceed \$5,000 for the lawyer and the total assessments in arrears is \$650.00 owed the HOA by one member. This can cause a member to file for bankruptcy or cause foreclosure and loss of his home. Money can be made if the management company and lawyer understand how to work a foreclosure. If the homeowner goes to court to defend himself, he will usually do so without a lawyer it's called Pro Se; because he can't afford an attorney over say \$300 to \$5,000 claimed owed the lawyer and HOA. In most County Courts, justice is dealt by ambush. The lawyer representing say 20 HOAs has a revolving door relationship with the Judge. The court has all the trappings of Justice, panel walls, defendants table and plaintiff's table and a guy in a robe. That's where the justice stops. Hang around and you will hear the sound of a train rolls through the room called Court.

Now the delinquent member has the original fees plus the cost of the attorney's appearance in court. Lawyers can knock down another \$2,000 or more in legal fees and get a Court to agree and order a lien on the member's home. Remember this homeowner fell behind to the tune of maybe \$600 to the HOA and now owes \$6,000 to \$7,000.

Isn't this a great way to make money? Some members maybe aware that with the right to lien a property none of these legal fees are necessary. The right to lien a property also gives the HOA the right to foreclose on a delinquent member's home. This legal right can be very effective at protecting the HOA delinquent assessments at legal expense of under \$300.00 per foreclosure. This must be kept quite as the membership if ignorant will always make money for those companies providing services to a HOA.

**Audits** This is an area that the board and property manager must run how the audits are performed. The Property Manager usually has found a CPA who will perform an audit that will never show any wrong doing on the part of the board or manager. An Audit should not cost over \$1,000 but because the Manager usually gets a kick back on all services he brings to the HOA the fees can run as high as \$3 to 4,000. The audit letter instructing what the audit is to include will have the statement "At no time will there be an effort to find wrongful acts on the part of the board or property manager. The CPA is to never tie any spending of funds to the Board of Directors having approved the funds paid from the HOA General Account. This is one clause that requires the CPA to find in the minutes of all board meetings where any funds over \$250.00 was approved by a Motion and Vote of the board at a duly held public board meeting. A clause like this could kill the entire game of making money.

**Transfer fees** These fees are like money from heaven for the property managers.. When a change in ownership or refinancing of a home the title company involved must have a form the HOA that the property is current in all fees and the seller or borrower does not owe any fee to the HOA besides the monthly assessments. The books at the Property manager's office on a computer will tell if there are any outstanding fees or fines against the property. A letter is printed out stating a review of the account has been completed and there are no outstanding fees owed by this property. Charge \$150.00 to the seller who doesn't know about this cost to his sale proceeds until he gets a sellers statement. Then it is too late to stop payment by stopping the sale. In years past a management company can make over \$24,000 in transfer fees in 3 years if sales are hot or refinancing is hot. These fees can be hidden from IRS since they are derived from multiple HOA on irregular bases. A director or two are usually in for their cut of this income.

### **The Right Management Company**

**The management company can be a real key to keeping a directors life simple and peaceful.** A company that will do everything for the board and handle all the calls from owners and has thick skin. This type of company will call the police on any member of an association and press for charges if the owner insists on seeing the books. The company has to have a full time bookkeeping system that has software that can't be purchase on the open market. QuickBooks is the wrong software for a management company since it can be transferred to a public accounting firm overnight. Once the accounting books are set up on a proprietary software system, changes in management become difficult with the old books on one system and the new books on a new non-compatible accounting system. QuickBooks can perform all the functions needed for a Homeowner's association

but don't admit it to the membership. The more sophisticated the accounting system the more numbers can be hidden from the membership.

**Make sure the contract between the management company and the Association favors the management company.** Examples:

- a. The management company is not obligated to abide by the Association's Covenants and Bylaws. This will mean the management company can do things the Board of Directors can't. This could be inserted in the property management's contract but all HOAs accept the contract given them by the property management company with no changes.
- b. Hide the books and papers when the membership asks to review them. I know of one Association that kept the books hidden for over 4 years.
- c. Let the In Group review the books as evidence the books are open to the memberships and hide them from the Out Group.

**The Right Lawyer.**

**There are law firms that specialize in representing HOA.** This could be good and could be bad. First step ask your management company whom they like working with as a law firm. Many times the same management company and a law firm will work together representing say 40 HOAs. This makes for a real smooth and profitable working relationship. The Board of Directors can be sheltered from the daily obligations of a HOA. Let's face it the board is just volunteers and should not have to spend more than 3 hours a month at a board meeting. The management company and lawyer should be in charge of all actions needed to run the HOA. Look for members of the CAI which stands for Community Association Institute. Now this is a group who knows how to squeeze all the money out of an HOA that is possible. They are real good at misleading the State Legislature in what laws to pass not to protect the voters but the HOA industry they are a member of.

**Make sure the law firm will be responsible for the collection of delinquent assessments and the management company in running the Association books.**

A contract will have to be signed between the HOA and the law firm. A sample copy of a law firm's contract will be attached to this manual with all the important points covered for the income to the law firm. The management company and lawyer will work together to approve legal fees charged the membership. The Board of Directors is suppose to approval all charges against the membership but they don't know that and no one will tell them how they are being screwed. A lawsuit against a member for delinquent assessments is also supposed to be approved by the board but again the members don't know that. So the lawyer and management company can set the fees charged a member and he has no recourse but to pay it or lose in court.

**The following points are listed to alert the Board of Directors how to protect themselves from the membership.**

1. The lawyer by notice from the management company can start lawsuits against the membership without bothering with a vote by the Board of Directors. Grant this authorization by claiming time is of the essences and lawsuits can't wait for a board meeting.
2. Lawyer must list his fees but no one checks to see if the invoices charged the Association match the hours charged. The legal fees to collect delinquent assessments are charged to the member's assessment's account, so the amount charged doesn't concern the board. The board can claim the legal fees did not cost the Association anything. (Of course, the members did pay the legal fees and they are the Association but most members will not know the relationship.)
3. In the lawyer's contract a real nice deal for the law firm is payments by the member from his homeowner assessment are made each month to the lawyer first and if any money is left over it would first go to all other expenses of collection and then to the owner's delinquent assessments. This way a member will have a hard time getting current in his delinquent assessments but the lawyer will be very happy.
4. If a homeowner calls the Board of Directors to complain, have instruction at the management company to advise the member, this issue is between him and the law firm not the Board of Directors. If a member tries to settle the outstanding balance owed be sure the entire amount owed the lawyer is paid first and maybe the board could give a little on the assessments owned. A nice settlement statement is, "Pay it all or nothing will be credited." I have heard of members trying to pay down half of the assessment, which can be refused by the lawyer unless his fees are paid before the assessments. A board member should not be aware of this refusal to accept a payment. That's why directors don't return phone calls from delinquent members. If caught at the store in person the Director should say it's in the hands of the attorney and I can't get involved. (This is a lie) but it helps the directors to hide from their fiduciary duties to the membership.
5. The law firm is paid to be representing the Association but in truth the Board of Directors will be advised how to cover their mistakes in running the Association.
6. Another good trick is the lawyer's legal opinion. When the board asks for a legal opinion, and wants the opinion to favor a position of the board, the opinion can be given with a weasel clause included in the opinion. This clause will state something to the effect the lawyer or law firm is not liable if this opinion is proven wrong. The board can tell the homeowners the lawyer has agreed with the board opinion and they have a written legal opinion on file. Of course, this comes under the heading of hiding the books so no one will read the entire opinion. Homeowners will accept the verbal statements of a board if the lawyer writes an opinion that clears the board. Of course, the opinion will not stand up in court.

7. Make sure one or two board members are the only ones who can talk with the lawyer. This way the legal communication is kept to a few and questions from the entire board are limited. Most board members are lazy and will let one member spend time with the lawyer and bring back the answers second hand. This will keep many board members ignorant of the legal issues. Make sure all legal advice is verbal not written. Once a legal opinion is committed to writing and paid for by General Funds it becomes the property of the HOA and any member has the right to see it. If kept verbal and the opinions are not in favor of the board it will not be repeated to the membership. Remember verbal legal opinions can't be used against the lawyer if he is intentionally wrong.

8. Most homeowners will not question a lawyer at meetings. If the average price of the homes in your subdivision is below the average price for the city say Denver then the owners will be less forceful in their ownership rights. Homes in a high price range will have owners who have fought to get where they are and will not put up with a Board of Directors that are not protecting their rights.

**Keeping the books of the HOA** The property manager will perform this function and will keep the books locked up to prevent the membership from seeing anything that is not in the best interest of the board. The following are examples of how this works.

1. All legal documents are to be kept out of the records such as lawsuit against the membership. One HOA had a report made by the courts on how many times the HOA had a recording in the clerk's office and found from 1996 to the present there were over 165 lawsuits or litigation involving the HOA and there was nothing in the books on any of these lawsuits. (Dam East HOA) The lawyers will do this for the board and keep the legal documents in their office as their records and the membership aren't aware of these court actions. Big rule in law is "HIDE AND SEEK..... LAWYERS HIDE AND LET THE MEMBERS SEEK."

2. Keep insurance records out of the books except for the liability insurance protecting the HOA from accidents. The issue of insurance companies' double dipping is explained in another chapter.

3. Deny all access to the books by members. This can be done if the board has the right to question the purpose of the request and the member must tell what records are to be inspected. If it is left to the discretion of the board to approve the member's request there will be no problem denying the books.

4. Keep the books incomplete with minutes of meetings missing and in most cases don't allow a director to sign the minutes as being complete. This way after a year no one will remember if the minute are true or not. They could be just a copy of minutes that were never approved by the board at a later meeting.

5. If there is a director who really wants to run the board and he is of strong conviction let him do it. All this motion and votes gets in the way of running the

HOA. He was elected by the membership which means they want him or someone to run the HOA.

6. If a court has issued an Order against the HOA for past actions leave the Court Order in the books for the year it was issued and it will be forgotten by everyone and the board can continue to perform the wrongful actions the court denied. One judge said when a judge retires from the bench his orders doesn't have to be followed anymore. So who knows if the board doesn't carry forward all legal files beyond the year they occurred. This will protect the directors if a wrongful action is repeated in violation of the court order.

7. Some HOAs are getting smart and requiring that the meetings be recorded for the record. This trend must be stopped immediately. This is especially true of the annual meetings If they are not recorded the minutes can be rewritten by say the president and they will not be reviewed until the next years annual meeting and who can remember what was said, right?

8. Make the monthly meeting boring and non action. The less membership who attends the better for the directors, property managers and association lawyer. If Robert's Rules Of Order is required to run all meetings violate that requirement and work up your own board rules which give the board full discretion of who can talk and for how long.

This manual is provided to the members of HOAs as a guide on how their Association can be run without interference by the membership. There is a second addition coming with more ideas of how to control an Association for the benefit of the lawyers, management companies, and the egos of the Board of Directors.

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**Chapter 14 B.**

**B. How to Protect Yourself from the HOA Industry PROPERTY MANAGERS, ASSOCIATION ATTORNEYS AND INCOMPETENT BOARD OF DIRECTORS.**

**They Are Out To Make Money On Your Ownership In A Covenanted Association.**

This subject is for the HOA member who has been a resident for many years and only recently has been in some conflict with the Board of Directors, ACC, Property Managers, or the Association attorney.

EVERY ACTION BY AN HOA MUST BE RATIFIED BY AN ACTION OF A MOTION AND VOTE BY THE BOARD OF DIRECTORS AND RECORDED IN THE MINUTES OF THE BOARD MEETING. Seldom does a single director have the authority to run the affairs of the HOA. The Board of Directors is the only ones who have the authority granted by the Articles of Incorporation to manage the HOA. Any action taken by someone on the board against a member without a motion and vote of the board is Ultra Virus. (Explained later).

1. You have been fined or are behind in your assessments and have just been reported to the Association Attorney for collection.

**A.** First step is **don't write or answer the letter from the lawyer.** Stay with the Treasurer in your communications. Let's say you are \$300.00 behind and want to pay this amount off by increasing your monthly assessment by one and a half for the next 4 months. There is no need for an attorney to get involved since **you have offered a settlement which must be considered by the BOARD OF DIRECTORS, NOT THE ATTORNEY.**

**B.** Ask the Board if a transfer from the Treasurer to the attorney has been voted on at a duly held board meeting by motion and vote with a quorum and the action was recorded in the minutes of that Board meeting? Now is when you have to get out those recorded documents called Covenants and Bylaws. Right now you are at the cheapest cost to this problem and your time is not billable.

**C. Read the entire Covenants and Bylaws** over a few days and make notes where you think sections apply to your problem. The Board's responsibility to the membership is the collection of Delinquent Assessments. The Board has no responsibility to assist any lawyer to collect his legal fees against a member of this HOA. Have a meeting with the Treasurer to discuss why you got behind in your assessments. If he doesn't want to meet with you write him a letter and copy all the Board Members. Don't be embarrassed by this delinquency, everyone can have their moments in life when there was a bump in the road and now you want to smooth it out. The reason you want to follow these suggestions is because the attorney knows how to play this game for his profit your loss which could be very substantial if it is not handled right.

As long as you make a payment over the regular amount monthly, the Board should have a problem trying to turn you over to the attorney. The next letter to the Treasurer is if there are any legal fees pending against your account, you want the amount to be voted on by the Board of Directors at their next meeting. No legal fees can be charged you unless the Board has ratified them by a motion and vote at a duly held board meeting.

**D.** The problem may still exist. Even though you have made extra payments, the lawyer is still sending you letters which you leave unanswered until the Board formally votes a transfer from the Treasurer to the lawyer.

For example, you have been unable to make extra payments each month but have a plan to bring your assessments current. Whatever the plan, you have to explain it in a letter with copies to everyone. Remember verbal conversation mean nothing unless they are followed up by a letter.

By this time you have received several letters from the lawyer with additional legal fees claimed against your account which you will now respond to. You ask when these fees were approved by the Board of Directors and has he been paid in advance by the Board without being ratified by the Board at the last meeting?

This will give you some time and cause the Attorney to confirm he was both authorized to contact you and to charge you reimbursement for advance payments of his legal fees for collection efforts against you. Here you have two choices:

1. If you were able to make the payments as suggested you question why you have been charged legal fees when you have been paying down your delinquent assessments monthly.
2. You can't make those extra payments monthly and advise him you have a plan of bring the delinquent assessment current within 6 months from now. Additional legal fees will not cause you to pay the assessments any faster than the plan of repayment has explained. You will object to any additional legal fees and consider them the same as extortion and will advise the Board of the same.

**At This Point I Must Advise I Am Not An Attorney And I Am Not Holding Myself Out To Be An Attorney.** I am not charging you for any advice you or anyone else might claim in your opinion is legal advice. My charge for this chapter is just that, a fee to cover my costs of providing chapters in a book I am writing on multiple subjects that involve HOAs.

Throughout your actions to defend yourself you must keep the Board involved in everything you do with the attorney. If he demands all of your payments be applied to his legal fees, your answer in writing to the Board must ratify this method of payments is denying you the right to pay on your delinquent assessments. There is nothing in any Covenants and Bylaws that allow the Board to make a members pay legal fees only when you have two creditors. It is my understanding Federal law and most State laws rules payments owed to more than one creditor gives you the right to designate the amounts to be paid to each creditor. When a board is charging a member assessment fees and collection fees by an attorney the member can allocate the amounts between these two creditors by law. A \$1.00 to the lawyers' fees and \$75.00 to the members' assessments. This should give everyone involved a little heartburn.

The next hit for you is to demand the Board prove advance payments of legal fees to lawyers meet the Statement of Purpose for funds spent from your General Funds. Paying advance fees to a lawyer who hasn't completed the process of collections is not what the Articles of Incorporation state in most HOAs how the money should be spent by the Board.

At this point if the Board is smart, and that is not always the case, the lawyer should be pulled off collections. If not, then you might need advice from a lawyer and there are ways to get free legal advice. I can't go into that subject here, but I believe you can ask questions of lawyers in your town and they can point you in the right direction.

Let's say you have a problem with the ACC and you have received a notice or violation on your front door. Let's say the violation is contested by you, here is what you do.

Go back to the documents and find what it says about the functions of the ACC. Most Covenants and Bylaws state the ACC is a standing committee. This means the committee is not formed or created by the Board of Directors but by the Articles of Incorporation. It will exist whether the Board approves it or not. In most HOA documents states the only control the Board can exercise over the ACC is the appointment or removal of members. You may be surprised to learn the Board has never taken the time to appoint the members by motion and vote formally, to every appointment of the committee of ACC. If the Board can't show where they appointed the ACC members then any action taken by the ACC is null and void. The ACC doesn't exist until they are appointed by the board by motion and vote. Sometimes the Chairman of the ACC thinks he has the authority to bring on new members and he appoints someone who volunteers. These appointments are not legal and the member is not on the committee unless the appointments is confirmed by a motion and vote by the board and are in the minutes of that board meeting.

The next problem is Robert's Rules of Order. Most HOA documents require RRO and these rules state at each annual meeting all previous committee members and procedures

must be reconfirmed by the new Board of Directors at the first meeting after the annual election. The purpose of this reaffirmation is to clear the decks of all past appointments going back as far as need be. Without this vote, Boards could be required to follow procedures or appointments going back 15 years. Well guess what, most Boards don't reaffirm any appointments or procedures. Thus some committees have been in power for years which without being reaffirmed at the last annual meeting they have no power and have been acting on their own as private citizens. Ultra Virus

None of their commands, orders, fines or whatever is legal and they have no corporate shield to protect them from lawsuits since they were never reaffirmed as a legal committee. This also means they can be sued and the HOA can't provide any legal counsel, or pay for their legal fees as a defense. Let me tell you when an ACC committee finds out they are not legal and all their orders of violations are not by authority of the HOA the word used by lawyers is Ultra Vires. (Outside of the corporate authority).

So with a violation you must determine if any of the above fits the situation and if it does go to the next ACC for your hearing and advise the committee they are not legal.

If none of the above fits and you are truly in violation and the ACC is legal you best reach an agreement with the ACC on a schedule to fix the problem and thus remove the violation. In most HOA Covenant and Bylaws the Board of Directors has the authority to fine a member for a violation on the **common property only** not a member's own private property. The ACC has very limited authority over the private property within an HOA. Read what areas are covered where the ACC has any authority over your home.

The Board of Directors has no authority to overrule the ACC decision. Only the ACC has the authority to file charges against a member in a court proceeding for a violation. The Board's authority at this point is they must ratify by motion and vote the money to be spent on the lawsuit. If these two actions are not completed and recorded in the minutes of both committee minutes and Board minutes then a lawsuit filed in court is unauthorized and must be dismissed by the court or withdrawn by the ACC.

The most important message a member of an HOA has as protection is that you must be active in the monthly meetings. Attendance of at least half the monthly meetings will remind the Board who you are and that you are knowledgeable about the rules they must follow as directors. Have a friend make the other meetings and inform you what happened when he attended and you do the same for him.

**The HOA is for the membership's benefit** not the Property Managers or CAI lawyers who are supposed to be representing the association. Updates to this chapter will be made available from time to time for paid subscribers.

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