

**This review covers 8 years of intentional mismanagement of the Dam East Homeowner Association.**

This mismanagement by the professionals in the business of managing or representing HOAs has been for their profit that was obtained from the rape and plunder of the membership. During this review all the dirty tricks used to steal money from the membership will be explained in detail. The only way to stop these crimes is for the State legislature to place all management companies of HOAs under the control of the Real Estate Commission.

These same dirty tricks prevalent in today's business of acting as a Property Manager or Association Attorney and a Board of Directors who are ignorant of their fiduciary duties to the membership. Most board members when first appointed to the board have little knowledge of what they are supposed to know. Then with time they become aware of their responsibilities but are too embarrassed to admit the mistakes they made and try to cover up the wrongs committed while they were newly appointed.

**Installment 1 Dam East Homeowner Association Year 2000.**

Board of Directors Greg Silva President, La Vone Adams Vice President, Finn Larsen Secretary, Steve Clough Director, Dalton Ford Director.

The following narrative has been retrieved from letters sent to the board by Jim Burneson. From year 2000 to the present he has sent over 500 letters, and emails to the Board of Directors, property managers, and Association lawyers. These letters are the cause Mr. Jeffrey Lane of Patterson, Nuss & Seymour, P.C. got a Permanent Protection Order to put me in jail for 31 days. Now he is trying to put me in jail for 180 days for annoying the board with more letters. Mr. Lane received \$30,000 legal fess for getting County Judge Burns to issue the PPO in Arapahoe County court. .

The Attorneys involved are Paul Swift of Hall and Evans and Timothy Moeller of Winzenburg, Leff, Purvis & Payne. The Property Manager is Western States Property Services Inc. Earl Johnson manager. Mr. Jeffrey Lane will make his appearance around year 2003.

**FIRST THING TO DO IS CENSOR THE CRITICS VOICE FROM THE MEMBERSHIP.**

March 12, 2000. In the March newsletter an "editor" of the newsletter made an announcement that homeowners' opinion letters would no longer be e-published. The purpose of this refusal was to silence the voice of the membership and censor opinions that are critical of the Board of Director's actions. Since this date no member's letters have been allowed to be printed in the HOA's Newsletter.

A legal opinion was requested with payment made from out of the General Funds and the opinion be published in the newsletter. This request was never granted and the membership since 2000 has never been allowed to publish anything in the newsletter. Only the Board can give their opinion, even though the newsletter is paid for by the General Funds of the HOA.

### **NEXT IS: DENY ACCESS TO THE BOOKS FROM MEMBERSHIP REVIEW.**

The books and papers of the HOA were already being denied access to the membership as of this date.

July 28, 2000. Once again Western States Property Services Inc. management has refused access to the books of the Dam East. The way this was done is that Mr. Johnson Property Manager had to be present when the books were being reviewed. His schedule was not open for any times to allow a review. This way the books are denied access for a members review. Bylaws allow review of books during regular business hours at the office of the HOA.

A property manager has no authority to deny anything from a member unless by written order as authorized by a motion and vote of the Board of Directors and the motion must be recorded in the minutes of the regular scheduled meeting. Most Homeowners don't know this fact and allow themselves to be ordered around by the Property Managers.

May 3, 2000. "Western States Property Services Inc. is now trying to charge \$25.00 per hour for review of the books by a member. This is against the law, but Mr. Earl Johnson doesn't care as he is running the HOA and the Board of Directors haven't given him the authority to make this charge". (Remember motion and vote for any authorization.)

### **SETUP A SYSTEM OF CHARGING LEGAL FEES FOR COLLECTION OF DELINQUENT ASSESSMENTS**

"Legal fees can't be charged in an effort of collections unless they are approved by a judge as being reasonable. Check the Covenants." This was the beginning of the biggest rape and plunder by Property Managers and lawyers working together for charges against the individual members without the Directors approval. Property Managers are the ones who teach all the dirty tricks of stealing money from an HOA.

The State Statue CCIOA (Art. 33.3. Colorado Common Interest Ownership Act, 38-33.3-101 to 38-33.3-319.) gave Attorneys the right to charge legal fees for collection of delinquent assessments in an HOA.

With this authority the Property Managers and the lawyers took it one more step further and decided they didn't need the Board of Director's approval to charge the membership collection fees of any amount they chose to assess.

Here is how it works. An Association Attorney has 20 members who are delinquent in their assessments. Some Property Managers notify members that they are delinquent 15 days after the 1<sup>st</sup> of the month, when the Bylaws state it is 30 days after the first of the month. The attorney sends a letter demanding payment and charges \$100.00 to each owner. That's \$2,000.00 for this month in legal fees. A bill is submitted to the property manager and the board does not vote to approve this fee because it would then appear in the minutes of the Board meeting. **THIS FEE GOES UNAPPROVED AND IS PAID TO THE ATTORNEY WITH THE APPROVAL OF THE PROPERTY MANAGER WHO HAS NO AUTHORITY TO APPROVE ANYTHING.** The Board of Directors are told the CCIOA authorized this payment and the President and Treasurer signed the checks that prepaid the lawyer his collection fees, yet nothing was reported in the minutes of a Board meeting. The membership had no knowledge of these payments to the lawyer without notice of approval in the minutes of the monthly board meetings. The individual homeowner is now charged his share of this prepaid fee and the legal fee is added to the total assessment fees owed by the owner which now totals \$300 in assessments and \$100.00 in legal fees. The accounting entry will now show assessments owed are \$400.00 with no breakdown of how much is owed in legal fees. The legal fees are no longer titled "legal fees" but are shown as assessments owed.

If a member disputes the charges, the books will not be open for review, and he can't argue that the legal fees are too high to anyone. His calls for help to the Board of Directors are answered by "This is between you and the lawyer we, can't interfere with his collections." Homeowner just learned he has no defense for any charges made against him by the association lawyer. Now for the best trick the attorney has in his contract with the HOA, all legal fees must be paid first before any payments will be credited to the member's delinquent assessments. I know of members who have written the attorney asking that their payments be applied to the delinquent assessments and the attorney has refused and then charged a fee for answering the letter. The practice usually used is that the attorney will call the member and deny him his request so it is verbal and not in writing.

In an HOA with 425 homes, as in the Dam East Homeowner Association a lawyer can pull down \$20,000 to \$40,000 a year in collection fees that are not approved by anyone on the board. Timothy Moeller of the law firm Winzenburg, Leff, Purvis & Payne walked out of this HOA in 2003 with over \$60,000 for three years of work with not one dollar being approved by the Board of Directors. **NOW YOU SEE WHY THE BOOKS ARE DENIED INSPECTION.** The Mafia has voted this "theft" as a great scam worthy of 10 points.

The following is the statute in Colorado for Theft

## **18-4-401. Theft.**

**(1) A person commits theft when he knowingly obtains or exercises control over anything of value of another without authorization, or by threat or deception, and: **What did I just describe above?****

The delinquent membership now has assessments and legal fees to pay back with no way to defend themselves from a corrupt management company and a crooked lawyer. In many instances some members can accrue assessments and legal fees over \$5,000 which can take up to two to three years to pay back. Meanwhile the HOA is out the prepaid legal fees and has to carry the advance payments for the years it takes a member to pay it back. These fees can bankrupt an HOA and cause Assessments to be increased to keep the HOA running.

After 5 years the unpaid delinquent fees combined with legal fees can reach the unbelievable amount of \$35,000. Many HOA can't afford financially to carry back this amount. Meanwhile the lawyer and property manager are managing up to 40 HOAs at an average of \$25,000 per HOA, for a total of \$1,000,000 per year. Now do you see why the books are denied for a member's inspection?

### **CHARGE \$25.00 PER HOUR FOR PROPERTY MANAGER TO BE PRESENT WHEN BOOKS ARE REVIEWED BY A MEMBER.**

April 27, 2000. Letter to Board of Directors

Western States Property Services introduces the new tool to stop members from reviewing the books. It's a \$25.00 an hour charge for Earl Johnson to sit and watch while a member reviews the books. This was the latest method of denying the books from being reviewed by the membership. It didn't last long when it was proven to be illegal to charge per hour fees to review the books.

### **RESTRICT THE MEMBERSHIP AN OWNERS DIRECTORY.**

I requested an Owners Directory of the Dam East and was refused a copy for three years. The Owners Directory is left out of date to prevent other members from contacting new homeowners in the subdivision. Then when a list is provided it doesn't have phone numbers included. The Board of Directors has an updated list of Owners so they can solicit proxies in their favor for the annual election. This refusal by the Board to provide a membership list indicates the membership is not being represented by the Board.

April 28, 2000 letter to Tim Moeller of Winzenburg, Leff, Purvis & Payne.

This letter was in answer to Mr. Moeller's demand for payment of \$861.60 for claimed delinquent assessments by the Burnesons. The books are kept closed so the Burneson's can't prove this amount is not owned. There are legal fees included this amount and now more legal fees are going to be added to this amount.

**HIDE THE HOA INSURANCE POLICY AND ALL PAST LAWSUITS CAUSED BY THE BOARD OF DIRECTORS.**

Letter November 9, 2000 sent to the Board and Earl Johnson.

Request to review the books and accounting of assessments collected by the HOA. Also request to see all correspondence from the membership and all past lawsuits filed by the Board against the membership.

The request to see the insurance policies were denied by the property manager Earl Johnson.

**ONE OF THE BIGGEST RIP OFFS OF HOAs IS THE TRANSFER CERTIFICATE SCAM BY PROPERTY MANAGERS.**

In most HOAs it is the specific duty of the Treasurer to issue Transfer Certificates to Title Companies when an owner sells his property or refinances his property.

The title companies require the HOA to issue a Transfer Certificate stating that the property owner has no debt owed to the association. This means his assessments are current and he/she does not have any other debt owed to the association. HOA property managers jumped on this money maker and took the issuance of these Certificates away from the Treasurer and made it their duty to issue it, for a fee. Most Bylaws state a nominal fee will be charged for transfer certificates and the Treasurer is responsible for signing the Certificates. A nominal fee is considered something like \$15.00.

In year 2000 Earl Johnson was charging \$75.00 to \$80.00 for his bookkeeper to issue the Transfer Certificates (she signs them) and it takes 5 minutes to check the books and mail the certificate. A review of the number of Transfer Certificates issued by Earl Johnson's bookkeeper from 2000 to 2003 accounted for over \$25,000 for the Dam East Homeowner Association. The money charged under the name of and HOA must go into the General fund not the Property Managers personal checking account. IRS doesn't know about this income. Mafia rates this an 8 on a scale of 10.

In some HOAs the Treasurer and perhaps the Board of Directors get a kick back from the Property Managers for allowing them to pocket the fees for these Transfer Certificates instead of depositing the money in the HOAs bank account where all charges made in the name of an HOA has to be deposited. There is too much money made in Transfer

Certificates to follow the law and bylaws of an HOA. Later in this chapter review you will be shocked to learn the fees charged in 2007.

The following list of charges was provided the Board of Directors October 10, 2000.

**CHARGES AGAINST THE BOARD OF DIRECTORS OF THE DAM EAST  
HOMEOWNER'S ASSOCIATION.**

1. Board of Directors failed to manage the actions of Westwind Management Company from 1996 to 1999. The Board of Directors failed to manage and supervise Mr. Edward Burns Esq. Lawyer working in conjunction with Westwind Management Company that allowed excessive legal fees to be charged to homeowners in direct violation of the Covenants and Bylaws of the Association.
2. Contempt of Court. Judge Kenneth K. Stuart 6-30-93 District Court Arapahoe County Case No 90 CV 247. Due to the numerous times this Association has been charged with Contempt in the past, these charges should be considered as criminal contempt against all the Board of Directors. "The reason these allegations constitute criminal contempt is that, given the history of this case, there could be a showing of flagrant and repeated disregard of Orders of the Court." Quote by Judge Hickman.
  - a. Order 8 The manager routinely issues the transfer documents, and charges exorbitant fees (\$80) for issuance to the selling and buying homeowner, and does not deposit that fee to the Association's account.
  - b. Order 5 The Nominating Committee was appointed by the Board of Directors but did not include a Member of the Board as the chairmen and it did not function nor hold a meeting all year. The names were not included in the minutes nor announced to the membership at the annual meeting. The members did not serve as stated in the Bylaws Article VIII, Sec 1.
  - c. Order 11 The Defendant Board of Directors does not report all motions and votes. Some are not reported because the decisions were made in secret meetings. (Breach of law), some in order to make the Board's actions less notable, but most were not willful except for the convenience associated with "running a loose ship."
  - d. Order 18 The order requires that the ACC approve repainting and the Plaintiff claims that the Defendant is in violation of the Order and the Order's intent, as well as the Declaration of the Covenants and Restrictions in the following ways:

1. The Defendant Board of Directors has not appointed the prescribed (Covenants VIII 1) number of members to the ACC.
  2. The Defendant Board of Directors has approved color changes and architectural alterations over ACC objections.
  3. The Defendant Board of Directors repeatedly refuses to administratively support ACC rulings.
  4. The Defendant Board of Directors, it is believed, instructed the ACC to disregard Covenants an Article VIII-1 in respect to control over alterations.
  5. Since 1996 there have been many unauthorized alterations to the residential properties in the Dam East Subdivision. Examples will be documented and presented to the court.
- e. Order 18 “ Any act of maintenance which alters the structure in a way that is not consistent with all previously approved plans, must be submitted to the ACC and written approval for that maintenance must be obtained.” The Defendant Board of Directors denied the ACC’s attempt to obey this Order.
- f. Order 21 The Association, did indeed, adopt Robert’s Rules of Order to guide conduct at annual meetings. The Chair at the last annual meeting (Board President Adams), refused to accept a motion from the floor to amend the Bylaws to allow the membership to vote on the budget. When convenient and to avoid embarrassment to the Board, the Chair (President) arbitrarily declares some motions to be out of order relative to: budget amendments, Judge Stuart order. And Judge Hickman’s order Page 8 line 5 The association could, if it wished, by a specific amendment to the bylaws, require owner-member approval of the budget, but the association has not done that. (Because the Board president refused to allow the motion.)

3. Articles of Incorporation Article VII “ The affairs of this Association shall be managed by a Board of six (6) Directors.” The number was subsequently amended in the Bylaws to Seven (7) as per this article. For over seven months the board as operated without replacing these vacancies and without appointing a new Treasurer. The Association has been under represented without two directors and the office of Treasurer being vacated.

4. Articles of Incorporation Article IV the specific purposes for which it (the Association) is formed are to provide for administration maintenance, preservation and architectural control and to promote the health, safety and welfare of the residents within the above described property.” It is the Plaintiff’s claim that the word “provide” cannot be substituted for “promote” and the word “welfare” cannot be construed to mean recreation and entertainment. Therefore the Directors who allowed such expenditures

should reimburse expenditures by the Board for the purposes of resident entertainment and recreation to the Association.

5. The Declaration of Covenants and Bylaws vest architectural control in an Architectural Control Committee (Covenants VIII-1). The Defendant Board of Directors obstructs the ACC from performing its duties.

6. Bylaws Article VI, Sec 3, "Every act or decision done or made by a majority of the Directors at a duly held meeting shall be regarded as the act of the Board."

It is the Plaintiff's claim that the expense of all other acts or decisions not reported voted on by a majority should be reimbursed to the Association by those causing the expenditure (manager & individual directors). It is further pleaded that the expenses\* arising from any motion & vote not reported be reimbursed to the Association by the responsible Directors and manager. \*(Expenses pertaining to legal actions.)

7. "Meetings held by committees and special meetings of the association's executive Board, shall be open to attendance by all members of the Association or their representatives." (CCIOA 38-33.3-308 (2)) A committee to promote a special assessment in 1999 held meetings without notice of their location or time. No members of the association or their representative were allowed to attend. .

8. Bylaws Article VIII, Sec 1. (d) "Powers" The Board of Directors is not given the "power" to obligate a member, financially or otherwise, to a third party. The Board not only exceeds its power in this respect but also violates Bylaws Article XIII (which provides for a free inspection of Association records) when it allows the Property manager to charge homeowners an \$80.00 fee to issue a transfer certificate of an owner's assessment status. The money collected is not deposited in the Association's account but directly into the management's account.

9. Special meetings, in the DEHOA Bylaws, require "not less than three (3) days notice to each director. By extension, the same notice must be given to each Association member. Notice to the membership of Special meetings has not been given to the membership. §§§

Matters for discussion by an executive or closed session are limited to: §§§ 38-33.3-308 (4)

The minutes of all meetings at which an executive session was held shall indicate the general subject matter of the executive session. §§§ 38-33.3-308 (7) this has not been done in any minutes except a few.

Bylaws Article VI Sec 3 " Every act or decision done or made by a majority of the Directors at a duly held meeting shall be regarded as the act of the Board."

It is the Plaintiff's claim that the expense of all other acts or decisions should be reimbursed to the Association by those causing the expenditure (property manager, or individual Directors). It is further pleaded that the expenses arising from any motion & vote not recorded to be reimbursed to the Association by the responsible Directors and managers. (Expenses pertaining to legal actions)

8. Declaration of Covenants and Restrictions Article VI Sec. 9 This article provides for recovery of legal cost to the Association that are "reasonable" and "fixed by the Court." It is the Plaintiff's claim from 1996 through 1999 The Board of Directors allowed Edward Burns Esq. in conjunction with Tim Larson President of Westwind Management Company to charge excessive legal fees for collection efforts against delinquent homeowners. Edward Burn's attorney for the Dam East Homeowner's Association never advised the homeowners that his legal fees could only be charged if a Judge approved them in a court of law as being reasonable. From 1996 to 1999 many owners paid their assessments current and paid legal fees on top from \$200 to over \$1,000 without a Judge's approval as being reasonable. This was a form of extortion allowed by the Board of Directors whose fiduciary duties were to protect the homeowners.

A Public Accountant's Audit of all transactions from 1996 to 1999 will be required to determine how much money Edward Burns demanded from unsuspecting homeowners. It is the Plaintiff's belief she was also billed extra fees by Burns during this time period and wants a refund plus damages for the wrongs committed by the Board of Directors, Westwind Management Company and Edward Burns.

#### 9. C.C. R. Rule 1.13 Organization as Client

(a) "A Lawyer employed or retained by an organization represents the organization which acts through its duly authorized constituents, and not its individual stockholders, directors, officers, employees, representatives or other persons connected with the entity."

The law firms of Hall and Evans and Winzenburg, Leff, Purvis & Payne, and Edward Burns have performed in such a manor to restrict the Books and Papers of the association from the membership for long periods of time. During the first period of denial Mr. Edward Burns was legal counsel for the association and from August 1998 through 1999, he was aware Westwind Management Company was denying the Books and Papers. Many letters were written over the following years to the Directors and Tim Larson of Westwind management company. For the most part the Plaintiff was refused the Books and Papers and never received a response to requests made of the Board or Tim Larson. The law firm of Winzenburg, Leff, Purvis & Payne, LLP has failed to represent the Homeowner's Association of the Dam East in complete violation of this rule. Questions asked of Timothy Moeller Esq. to clarify and advise the Board of Directors of wrongs being committed went unanswered. On October 12, 2000 Plaintiff's agent James Burneson was denied the Books and Papers by Western States Property Services staff for the reason that the Plaintiff had filed a lawsuit and thus was denied the Books and Papers.

Mr. Paul Swift of Hall and Evans, L.L.P. continued the obstruction of member examination of the Books and Papers. Timothy Moeller of Winzenburg, Leff, Purvis & Payne, LLP continued to advise the Board of Directors and Mr. Earl Johnson of Western States Property Services to deny said access. The latest notice of obstruction was on October 12, 2000. The refusal by Western States Property Services staff, while on the phone to the lawyers, "Because you are in litigation against the Homeowners Association the Books and Papers are denied."

There are three legal reasons the Books and Papers are to be made available to a member or a representative. 1. The Bylaws of the homeowners' 2. The Nonprofit Corporation Statutes 3. Colorado Case Law *Reno, v. Dealer's Assn.* 151 Colo. 406 (Colo. 1963) (378 P.2<sup>nd</sup> 206) *Bill Reno, Inc. v. Rocky Mountain Ford Dealers' Advertising Asst.* No. 20,148 decided January 28, 1963.

10. Bylaws Article IX, Sec 1. "The Association shall appoint an Architectural Control Committee" Plaintiff claims the Board of Directors did, however, unofficially, have a working committee until resignations left it without the prescribed three (3) members. The resignations were not reported or acknowledged to the membership nor was the membership informed that Committee meetings were no longer being held.

Article IX, Sec. 2. "It shall be the duty of each committee to receive complaints from members on any matter involving Association's functions, duties, and activities within its field of responsibility" Plaintiff claims with the exception of the Architectural Control Committee, which no longer holds meetings, no committee announces the time and place of their meetings and, thusly, avoids membership knowledge and input. CCIOA 38-33.3-117(4) prescribes open meetings and 38-33.3-308(6) prescribes that "no rule or regulation of the Board or any committee thereof shall be adopted during an executive session"

11. Bylaws Article X, Sec 4, the annual meeting is for the conduction of "...any action except as otherwise provided in the Articles of Incorporation, the Declaration or the Bylaws"

It is nowhere "otherwise provided" that any committee or the Board approves the budget which as per Article XI 8(d) is presented to the membership by the Treasurer. Once presented to the membership it belongs to the membership. (For discussion and vote of approval) In Parliamentary procedure what the Board does is let the Treasurer present the budget and then have the President withdraw the budget when a member makes a motion to approve or an amendment is offered.

It is nowhere stated that "otherwise Provide" that the Treasurer may withhold the cash balance figures from the statement of income and expenditures. The Treasurer is required to make full disclosure for the year as stated in Article XI 8(d). Plaintiff claims the report and the figures were refused, when asked for, at both the 1999 Annual meeting as subsequent homeowners' meetings before voting on a Special Assessment. Plaintiff claims the denial of providing this report and figures was to influence the vote in favor of

a Special Assessment, which may not have been necessary had the complete financial statements been provided the owners before voting approval.

12. Bylaws Article XI, Sec 8(d) “The Treasurer shall...disburse...funds as directed by resolution of the Board and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting.” The Board does not approve the Association’s expenditures as the Article instructs, evidently leaving it to the Manager to determine what monies to disperse. The resulting unapproved expenditures Plaintiff pleads are reimbursed to the Association.

It is nowhere stated that “otherwise provided” that the Treasurer may withhold this report or the cash balance figures from the statement of income and expenditure. The Treasurer is required to make this information available by article XI 8(d).

The present annual budget is, indeed, not presented but only published. See homeowners’ rights thereto under 11. above.

The presented “statement of income and expenditures” did not include its most important detail the cash balance and list of expenditures. It was asked for but evidently withheld so as not to jeopardize a proposed dues increase.

Prepared by Jim Burneson property owner in the Dam East.

When the Association lawyer and Property Managers of HOAs are in the conspiracy along with several Directors the charges listed above will be hidden from the membership and the person who filed the charges will become the recipient of threats and charges of assessments owed that are not valid.

**NEXT: CHAPTER 2 COVERS YEAR 2001 WITH MORE TRICKS USED TO COVER UP THE LAWYER AND PROPERTY MANAGERS ACTIONS TO RAPE AND PLUNDER THE MEMBERSHIP OF THE DAM EAST HOMEOWNER ASSOCIATION.**