

CHAPTER 14 C.

**WESTERN STATES PROPERTY SERVICES INC.
HOA PROPERTY MANAGERS
MEMBER OF COMMUNITY ASSOCIATION INSTITUTE (CAI)
By Jim Burneson**

The statements made herein are the sole opinion of the writer.

Earl Johnson is one of the property managers for this company. He has been the property manager of the Dam East since 2000 with or without a contract to manage. A list is provided at the end of this chapter of the other Associations Western States Property Services Inc. manages. Mr. Johnson is listed as a member of the local CAI chapter.

Go to AHRC Newsletter <ahrc@ahrc.com> website and there are weeks of stories where CAI property managers and lawyers victimize and prey upon the memberships of HOA's across the county. Florida, Georgia, Arizona, New Mexico, Colorado and California.

It is suggested if your HOA is managed by Western States Property Services Inc. or Westwind this is a "must read" summary of what may be happening to your HOA that you may not be aware of.

Property Managers are not licensed by the State Real Estate Commission and thus have no oversight for their actions. Some Property Managers are managing 20 to 50 HOAs along with the supposed Association Attorney. The annual gross general fund for 50 HOAs could range \$10,000,000 to \$17,500,000. This represents big money **interests that should be supervised and regulated** by the Real Estate Commission. Let your representative to the State Legislature know.

1. Lets start with the **TRANSFER FEES.**

This is a **big** money maker for property management companies. When a homeowner is selling or refinancing his home the lender or buyer's lender and Title Company needs a TRANSFER CERTIFICATE FROM THE BOARD OF DIRECTORS stating that your address is current in with all fees and there is nothing owed at the time of the sale. Most Covenants and Bylaws (90%) state that a transfer certificate must be issued by the Treasurer of this HOA and any fees charged are to be paid to the Association. If the Management Company requires a fee for it review of computer records (5 minutes at most) then the HOA will issue payment from the general fund for this service.

But that's not how it works. Most management companies take this job over (not listed in their employment contract) and leave the Board of Directors out of the process. The going rate charged by Management Companies is \$75.00 to \$200.00 for this five minute search, printing and mailing of a TRANSFER CERTIFICATE to the

title company advising what the status is on your property. Western States Property Services Inc. from 2000 to 2003 collected over \$45,000 in Transfer Certificates from the Dam East HOA alone.

The seller usually doesn't know of this charge until he/she gets the closing statement for the new loan or closing on the sale of the house. It's too late to **OBJECT** even if you want to and the board who allows this to happen usually has allowed other actions in violation of members' rights. Another problem is when the Property Manager claims you owe \$300.00 in back assessments which you don't owe, but you don't want to miss and lose the closing or loan over the Management Company's **opportunity to overcharge for fees.**

2. Property Management companies in house **BOOKKEEPING SERVICES.**

All bookkeeping accounting must be done by an independent public accountant to protect the membership from the following standard practices. This is the area where the major abuse is committed against the membership while the Board of Directors looks the other way.

a. The main accounting function is posting monthly assessments paid and maintaining the delinquent members report. If a member is critical of the board or Property Manager the member's payment on assessments will be held after the date of late payment then the check is cashed to prove the late date and the member then charged with a late fee.

b. If you for whatever reason become delinquent in your assessments after 90 days the CAI Lawyer will send you a letter of notice. A new fee will be charged to your account without the Board of Directors approval. This approval is granted by Earl Johnson who has no approval authority. Now your account balance is \$280.00 plus \$45.00 legal fees. The Tort Twister lawyer fees have been prepaid by the board, again without board approval at a duly held board meeting by motion and vote and if approved it should be entered in the minutes of the meeting. If all of this has not occurred then the legal fees charged to your assessment account is invalid. If you write the attorney his return letter will cost you \$75.00. The fees will build each month you have to pay the legal fees before you can pay the delinquent assessments. Yes that's right, **all legal fees must be paid first** which means you may never get out of delinquency depending on how hard you fight. Legal fees not approved by the Board of Directors can reach \$15,000 on up.

One owner told me he called the lawyer to ask if he could make a payment on his delinquent fees and was told no payment will be accepted until all legal fees are paid off first. The attorney then tacked on a fee for this phone call that was charged to the member. One person disputed a \$300.00 charge for a delinquent fee which ended up in Judge Ruddick's County Court of Aurora. After a three and a half days trial Ruddick found the defendant didn't owe the \$300.00 but awarded his good buddy Jeffrey Lane \$30,000 in legal fees. That's your 18th District Court of Arapahoe County in action. **One WORD CORRUPT!!**

The following is Case Law that address the issue that a delinquent member has the right to direct how their payments are applied to more than

one creditor. This stops tort twisters from demanding their legal fees be paid before any payments on delinquent assessments.

"The general rule is that announced by the trial court. We find the rule to be stated thusly: that a debtor owing more than one debt to a creditor has the right to direct to which debt the payment shall be applied. 40 Am. Jur. (Payment) 110; Restatement on Contracts, § 387; Mumm v. Taylor, 121 Colo. 157, 213 P.2d 836. In the absence of direction or expression by the debtor of his intent as to how payment should be applied, the presumption is that he thereby assents to such application of the funds as the creditor may desire to make. The creditor is allowed to make the appropriation in a way most advantageous for himself. Perot v. Cooper, 17 Colo. 80, 28 Pac. 391; Culkin v. Matz, 27 Colo. App. 198, 149 Pac. 270; Richie v. Phillebaum, 137 Colo. 295, 324 P.2d 375; 70 C.J.S. (Payment) § 57."

This case law gives you the right to tell the Association attorney you want a \$100.00 payment to apply \$99.00 to your delinquent assessments and \$1.00 to legal fees. This direction of payment must be honored by the Treasurer of the HOA. The Tort Twisters will realize you know something about the law. **Because of this legal right, a delinquent homeowner can apply all payments to his delinquent assessment and a \$1.00 on the legal fees and this should stop HOAs from prepaying tort twister. The HOA will never get reimbursed their prepaid legal fees at a \$1.00 payment a month.** The Association attorney will not tell you this fact while he is supposed to be representing the membership of the Association.

This rule of a debtor must be the same across the country and is also stated in Federal law which those of you who live outside of Colorado need to find. Ask an honest attorney. The Association Attorney cannot represent the Directors but it's the incompetent directors who allow the white collar extortion of collecting legal fees over the assessments. An HOA does not exist to be the collection agency for lawyer fees charged homeowners who have no protection from their Board of Directors who has the fiduciary duty to protect them.

c. The property managers will become the **RECORD KEEPER OF THE HOA BOOKS** rather than the Secretary of the Association.

The Property Managers will be the first ones to refuse the membership their rights to review the books. Property Managers do not have any authority to refuse any members request. When these refusals occur the term of these actions is **ULTRA VIRUS...** This mean the agent or a director is acting outside of the authority of the Non-Profit Corporation and thus the actions are without authority.

We in Colorado had a new law passed in 2005 called Senate Bill 100. This law gave further support to the member's rights to see the books. In 2006, Morgan Carroll and Robert Hagedorn legislators passed what they called a "Cleanup Bill" SB 06-89 that removed the member's right to inspect the books subject to the discretion of the Board of Directors. When the board has the discretion it means the members will never see the books. This bill SB 06-89 was written by the CAI to neuter SB 100. It did its job and both houses voted unanimously for passage, because they never read the bill. In my opinion, due to the low caliber of representatives elected, we doubt they would

understand the difference in the two bills but because one was titled “Clean Up Bill” they passed it based on the misrepresentation of the two Democrats Carroll and Hagendorn.

If you can’t get access to inspect the books of your HOA, it is not controlled by the recorded rules of the membership. SB 06-89 removed the requirement of audits unless 30 percent of the membership votes to have audits. Now there is no control over how the money is appropriated by the Property Managers and Tort Twisters.

ACCOUNTING SHAM BY PROPERTY MANAGERS AND ASSOCIATION ATTORNEYS.

When the Attorney gets his monthly legal fees paid for, one of his services being for collection efforts. He is prepaid, in advance, monthly and the fees are divided between those delinquent members’ assessment accounts that required the attorney’s efforts for collection. Now the legal fees are supposed to be paid by the delinquent member who can take months and even years for the Association to be repaid. These legal fees can add up to \$45,000 per HOA. The Treasurer is told to combine all legal fees with the delinquent assessments amounts and total the two and title them as Outstanding Delinquent Assessments to hide how high the legal fees are. Of a fee claimed to be all Delinquent Assessments actually is \$3,000 delinquent assessments and \$45,000 legal fees for a total of \$48,000. The treasurer then cries how bad this total of delinquent assessments owed the membership by delinquent members. “Isn’t that terrible?”

Within several years the HOA will notice big sums of money have been paid to the lawyer for advancing the legal fees for collections, but they have accounts receivable from their own membership. When the HOA pays the lawyer this year and it can take three years to be reimbursed, your accountant will advise you that you will be in the red. The CPA accountant is in on all these hide and seek on moneys paid in advance and the collection over three years from the members. The mafia is really jealous of this scam which can be enforced by the courts.

Now here is the rub. As the members pay back the legal fees, the payments are applied to reduce the advanced legal fees which reduce the amount shown on the books that was paid the lawyers for that year. In effect at the end of the year a 1099 issued for the total legal fees paid to the tort twister less the repayment made by the delinquent member and thus the tort twister has been able to avoid paying taxes to IRS. It works this way. If the lawyer has received \$30,000 in advanced legal fees in one year and the membership has paid back \$20,000 from the delinquency legal fees their assessments over the past 3 years in the same year it will be deducted from the \$30,000 and the 1099 will show that the lawyer was paid only \$10,000 for the whole year.

If I am right, there are a lot of Lawyers and Property Managers who **would be facing an audit, fines, tax penalties, possible jail time and disbarment for the attorney.**

UNDUE PRESSURE ON UNKNOWLEDGEABLE BOARD OF DIRECTORS

The Property Managers control the Board of Directors with statements like “this is the way all my other boards handle a problem like we have.” “Don’t worry I will take care of this guy and you just don’t answer any of his phone calls.” “I talked to the attorney

and he agrees with me lets take this one to court or let the member file the lawsuit, just let me handle the problem.” “I can make this member mad enough he will sue the Association. What can a lay person just elected to the board do with all these experts running the show? Remember a good attorney will keep you out of Court. CAI likes court for the legal fees.

The CAI Property Managers know all the tricks to intimidate and control directors so he and the lawyer can **victimize** the members of the association. For example, when a board of directors has lien rights on all delinquent members’ homes there is no lawyer needed to collect any delinquent assessments. Lawyers discovered this **valuable method of making more money** (golden goose) about 15 years ago. They convinced directors that collections were a problem and got them to allow legal fees to be included in the members account and then place a lien on the member’s property, which included interest and the total amount of prepaid legal fees on the total amount. Legal fees can’t earn interest in this situation. All across the country the emails screamed about this new income for lawyers who are designated as the Association lawyer. CAI posts all new tricks on how to squeeze more money out of the HOAs while the Board of Directors hide the books and hide from the members.

The Property Managers will hire an accountant to do the books of all the HOAs which is very profitable for the accountant. Of course the CPA will never report any violations involving the Property Managers or the Tort Twister on say 20 to 50 HOAs. It is really an audit of the Property Manager’s books named after the managed HOAs.

When a member wanted to see the books the Property Manager Earl Johnson would tell him the books are at the accountant’s being audited so you can’t see them **as they are unavailable**. The books would stay with the Accountant for a year. No books can be inspected even when it was required by the law. All Property Managers know tricks like this and no member of a HOA can defend themselves even with a lawyer, due to the cost of justice in our country. Property Managers start giving orders to the members directly when they have no authority to order or deny a member anything.

If the member pursues litigation Pro Se the Judges hate Pro Se and will work ex parte with the Association lawyer to make the member lose. As far as I can tell there has never been a member of an HOA who has won in the 18th District Court of Arapahoe County.

TO ALL HOA’s in Colorado, your main enemy is Democrat Rep. Morgan Carroll and Senator Robert Hagedorn. They represent the CAI state organization and not their voters in their district.

There will be updates to this chapter so those who have downloaded this chapter should check back for the updates.

Western States Property Services Inc. list of HOAs they managed

1. Bella Vista
2. Brookshire Downs at Heatherridge
3. Cheesman Wildcrest Condominiums
4. Cornerstone
5. Cornerstone at Tamarac
6. Creekside at Bridgecreek
7. Creekside Townhomes
8. Dam East Homeowner's Association
9. Dayton Green Condominiums
10. Eastpointe/Southwide (Sandpiper)
11. Enclave at Heritage Hills
12. Florida Park Condominiums
13. Four Mile Conds/Townhomes
14. Four Mile Village Condominiums
15. Greenbrooke
16. Innsbruck in Aurora
17. Jasmine Park
18. Jasmine Place Townhomes
19. Lakepointe Condos
20. Norman Condominiums, The
21. Ridge at Tamarac
22. Smoky Hill Homeowner's Association
23. Snowbird II Phase I Condominiums
24. Torrey Pines Condos
25. Vista Pointe
26. Westgate Plaza
27. Windstream Condominiums
28. Woodgate Commons
29. Woodgate South
30. Bella Vista
31. Brookshire Downs at Heatherridge
32. Cheesman Wildcrest Condominiums
33. Cornerstone
34. Cornerstone at Tamarac
35. Creekside at Bridgecreek
36. Creekside Townhomes
37. Dam East Homeowner's Association
38. Dayton Green Condominiums
39. Eastpointe/Southwide (Sandpiper)
40. Enclave at Heritage Hills
41. Florida Park Condominiums
42. Four Mile Conds/Townhomes
43. Four Mile Village Condominiums
44. Greenbrooke
45. Innsbruck in Aurora
46. Jasmine Park
47. Jasmine Place Townhomes
48. Lakepointe Condos

- 49 Norman Condominiums, The
- 50 Ridge at Tamarac
51. Smoky Hill Homeowner's Association
52. Snowbird II Phase I Condominiums
53. Torrey Pines Condos
54. Vista Pointe
55. Westgate Plaza
56. Windstream Condominiums
57. Woodgate Commons

I will provide all of the above named properties with free copies of the Chapters that relate to CAI Property Management Companies. It lists all Western States Property Services Inc. dirty tricks that I have learned since 1999.

Need to know how many of the above HOAs are jointly run by both Earl Johnson and Attorney Rich Johnston? What are the names of other lawyers who work with Earl Johnson on any of the above HOAs?

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Western States Property Services Inc. list of HOAs managed. Not up to date.

The statements made in this Chapter are solely the opinion of Jim Burneson.

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See Chapters 14 A and B which relates to this Chapter's subjects.