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Documented Organization's Use of Corporate  
Name and Property For Illegal Activities

Dear Mr. Nesbit:

The following affects one of your corporate clients and requires your immediate attention. The enclosures provide more detail which should be important to you. The actions of certain persons, plus the enclosed information, can pose an ethical problem for you if you choose to do nothing.

First, let me say that we are not inherently adversaries. I am providing you with information. You represent a nonprofit corporation which owns certain servient estate easement property subject to the declared "perpetual" easement rights running with the land. The enclosed appendix will unquestionably inform you that, among other things, certain parties have removed funds from the corporation's accounts without accounting for the funds as required under its bylaws. Certain parties have done so without even having the authority, under the limitations of the corporation's charter, to act as its officers and directors. They have misused its name and its property.

I am a property owner in an older subdivision which does not have and which never has had a homeowners' association. The same is true of over 500 lot owners who are neighbors in my particular subdivision as well as two nearby subdivisions which were all developed prior to 1957. As indicated by information published in the name of the corporation which you represent, you have reviewed the CC&Rs for the three subdivisions. From your review, you know that the Arthur T. McIntosh company

- (1) created three subdivisions from its McIntosh Acreage and recorded CC&Rs for each of the three subdivisions without requiring the lot owners to belong to a homeowners' association or any other kind of association,
- (2) declared "perpetual" easement rights running with the land for the lot owners to use a man-made Loch Lomond lake plus the two entrance ways to the lake, and
- (3) expressly disavowed creating a common interest community by which the lot owners would otherwise be required to maintain the lake by declaring that neither the lake owner nor the lot owners are required to maintain the lake in any "size, depth, or condition." (The punctuation varies.)

The Loch Lomond Property Owners Association (aka LLPOA) was incorporated in 1957. Under the LLPOA's charter, eligibility for membership is limited to those owning property in the Loch Lomond community consisting of the three subdivisions that the McIntosh company subdivided from its McIntosh Acreage.

It is commonly known, even by those who do not have a background in law, that a person cannot lawfully take property belonging to another person and then use a pretext to demand that the property owner pay money for a nonexistent debt which they know is not owed. It is also commonly known that an easement is an intangible property right to use property belonging to another. Some persons including attorneys are also familiar with 720 ILCS § 5/12-6.5 which makes it a crime to compel membership in an association by any unlawful means.

"A person who knowingly, expressly or impliedly, threatens to do bodily harm or does bodily harm to an individual or to that individual's family or uses any other criminally unlawful means to solicit or cause any person to join, or deter any person from leaving, any organization or association regardless of the nature of such organization or association, is guilty of a Class 2 felony." (emphasis added)

They can also be familiar with 720 ILCS § 5/47-5(14), which makes it a crime to "harass, intimidate, or threaten" home sellers or home buyers. Likewise, they can be familiar with 720 ILCS § 5/47-5(5), which makes it a crime to obstruct private ways and commons, without legal justification.

Not only do the CC&Rs expressly excuse the lake owner and the lot owners of the dominant estate easement properties from maintaining the lake in any "size, depth, or condition," 805 ILCS § 105/102.10(a)(7) requires those who incorporate a mandatory membership homeowners' association to specifically request that power in their articles of incorporation in order to have that power. The LLPOA's articles of incorporation show no such request was made. It was not chartered as a homeowners' association to administer one or more subdivisions.

Some persons, without the power to legitimately compel owners of the dominant easement estates to be members of the LLPOA and pay money to them which they collect in the name of the LLPOA, have

- (1) disregarded the corporation's 1957 charter plus an agreement reflected in its 1961 deed so as to hold mock elections with persons in two adjacent subdivisions who are neither eligible to be members of the incorporated association nor use the lake;
- (2) recorded false documents to create or transfer property rights which they did not have;
- (3) physically obstructed the two private entrance ways to the lake so that easement owners without lake-front properties cannot access the lake unless they pay money to those collecting it in the name of the corporation; and
- (4) demanded money while illegally threatening to not only continue to physically obstruct known easement rights but to inform buyers when houses are offered for sale that buyers will not be able to access the lake unless the home seller pays all so-called dues from 1983 onward. (Bylaws Art. VII)

In 1981, the first false document was recorded (#2128748). In it, under the apparent leadership of a real estate broker, persons in two outside subdivisions who had no property rights in the subdivisions created from the McIntosh Acreage purportedly granted themselves the right to be members of the LLPOA contrary to its 1957 charter. They also purportedly granted themselves the right to use the lake contrary to an agreement that the LLPOA entered into with the McIntosh company as reflect in its deed. In the same year, the first mock election was held with the outside lot owners and the real-estate broker's wife was purportedly elected as an officer, the corporate secretary. They also sponsored meetings in their real estate sales office where other members of the organization met to mail threats to interfere with sales unless easement owners paid money to them.

At some point, the organization constructed fences with locked gates. Also, beginning at some point in time in the 1980's, the organization began soliciting money while misrepresenting that the corporation needed money to purportedly satisfy an agreement with the McIntosh company to maintain the lake. Not only does such an agreement not exist, this false representation is contrary to the CC&Rs. Certain persons have also had actual knowledge of the falsity. The real estate broker, his wife, and several of those who have held themselves out as officers and directors signed a documents recorded in 1980 (# 2087334) by which they admitted knowing, on page 2, that the corporation has no obligation to maintain the lake in any "size, depth or condition".

In 1986, after the organization became aware of the holding in the 1984 case of *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 459 N.E.2d 1164, (Ill.App. 2 Dist. 1984), the organization recorded a false document with a bylaw in conflict with the *Lakeland* decision to purportedly compel all easement owners to be members of the incorporated association (#2413895). In 1986, while showing their awareness and disapproval of the 1984 *Lakeland* holding, they gave their bylaw a retroactive 1983 effective date.

The fact that members of the organization cannot compel easement owners to be members of the association contrary to the CC&Rs has been brought to their attention many times. They know that the *Lakeland* decision holds that an association which owns common property subject to easements can not assess dues not otherwise required in a subdivision's restrictive covenants against a lot owner merely because the lot owner has an easement permitting him to use a common area. In 2008, they wrote: "We can not change the covenant without every person in the Association agreeing to it." This again shows their awareness of the *Lakeland* holding, although the *Lakeland* decision requires consent from every lot owner while those claiming to be LLPOA officers and directors falsely represent that all lot owners are mandatory members of the LLPOA.

In 2010, after certain members of the organization contacted you, they reported that you advised them that they could modify the covenants with the consent of other lot owners. But instead of seeking the unanimous consent of all lot owners, they recorded additional bylaws (#6694614 and 6788212) with a retroactive 1983 effective date to reaffirm their bylaw to purportedly compel all easement owners to be members of the incorporated association and pay money to those who collect it in the name of the association. They are using the LLPOA name, plus LLPOA funds and its other property, to violate 720 ILCS § 5/12-6.5 without the authority to do so.

Can you please favor me with a reply. It will be appreciated and will help decide my future actions.

Sincerely,

J. G. Wahlert

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