Mr. Robert P. Nesbit
Attorney at Law
Kovitz, Shifrin, and Nesbit
750 Lake-Cook Road, Suite 350
Buffalo Grove, IL 60089

June 24, 2013

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 unquestionally 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 <u>or uses any other criminally unlawful means</u> to solicit or cause any person to join, or deter any person from leaving, <u>any organization or association</u> 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 Acerage purportedly granted themselve 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'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

1303 Dunleer Drive; Mundelein, IL 60060; 847-566-1218

Appendix to June 24, 2013 Letter

Unauthorized Actions in the Name of Your Corporate Client,
the Loch Lomond Property Owners Association (LLPOA)

Dear Mr. Nesbit:

As mentioned in the accompany cover letter, the following affects one of your corporate clients and requires your immediate attention.

Among other things, a small organization has been removing money from the accounts of one of your corporate clients without the authority to do so and without accounting for such withdrawals. According to a particular 2010 newsletter, you were retained by persons acting in the name of the corporation to give legal advice to the corporation. The web site for the Illinois Secretary of State indicates that you have been and still are a representative for the corporation: the Loch Lomond Property Owners Association (LLPOA).

The actions of the individuals plus the information that you have, and the additional information below, will apparently cause an ethical dilemma for you. Theoretically, you owe an undivided fiduciary duty of loyalty to the corporation. But you may feel a sense of loyalty to the individuals who have hired you and not informed you that they have been withdrawing money from the corporation's accounts without the authority to do so. The ethical dilemma, I suggest, involves a question of whether you should take action to protect the interest of your corporate client or otherwise protect the individuals by doing nothing to cause the funds to be recovered.

As described more fully below, certain persons acting together as a small organization have transferred money out of LLPOA accounts without the authority to do so and without accounting for the money. Also, they have knowingly sought to otherwise undermine the property rights of the LLPOA reflected in its charter and its deed.

The following documents show that the parties neither had the authority to remove funds from the corporate accounts nor the authority to remove the funds without accounting for the money. Based upon your reported review of LLPOA documents by you, you undoubtedly have one or more in your office and you can easily obtain others, including public documents.

(1) The 1957 charter for the Loch Lomond Property Owners Association (or LLPOA),
(2) a 1961 deed that it received to the Loch Lomond lake in Mundelein,
(3) the three recorded plats incorporated by reference in the 1961 deed,
(4) the three CC&Rs incorporated by reference in the 1961 deed,
(5) the LLPOA's bylaws,
(6) the LLPOA minutes,
(7) the LLPOA financial records,
(8) the LLPOA Annual Reports filed with the Secretary of State,
(9) documents recorded in the name of the LLPOA, and
(10) false maps and other false documents distributed to incoming lot buyers.

Because multiple reasons are given below as to why identifiable persons do not and did not have authority to transfer money out of corporate accounts, and do so without accounting for such transfers, it is not necessary to examine all of the documents to corroborate that.

In recent years alone, the organization has collected and transferred more than $1 million dollars. They have also expressed ambitions to increase their collections from approximately $160,000 annually to "four or five times" that amount, or approximately $800,000. That economic ambition has apparently been put on hold. In the year after I discovered the falsity of certain representations and provided information to fellow lot owners with easement rights, by coincidence or otherwise, the person holding himself out as the LLPOA president resigned.

It is possible that more than one theory can be relied upon to recover the funds. To the extent that it is applicable, it may be worthwhile to consider 805 ILCS § 105/103.20 as a way to make it easier to do so:

> "*Unauthorized assumption of corporate powers.* – All persons who assume to exercise corporate powers without authority to so do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof."

I. Since November 2012, money has been transferred out of LLPOA accounts by persons who do not have and did not have the authority to do so because they were not elected nor appointed by anyone who was elected at an annual election meeting as required by the LLPOA charter. (Without having the authority to do so, they have also used an unknown portion of the LLPOA funds to self-finance the undermining of LLPOA own property rights as established by its charter and its deed. This is described more fully below at II.)

The authority to act in the name of the LLPOA is reflected in its charter and its bylaws. The 1957 charter refers to annual elections and shows that annual elections are required. The annual election requirement is supported by the LLPOA's bylaws, and particularly Art III, Sec. 1. Another significant bylaw is Art IX, Sec. 2, which incorporates by reference Robert's Rules of Order Newly Revised (revised 2000), and provides the rule that must be followed when a meeting is cancelled because of a lack of a quorum.

The scheduled 2012 election meeting was adjourned because of a lack of a quorum. Instead of complying with the charter and the LLPOA's bylaws, and specifically Art IX, Sec 2 which mandates the actions of LLPOA officers and directors to be governed by Robert's Rules of Order Newly Revised (revised 2000) for situations not covered by the bylaws, certain persons decided to continue to collect and transfer money in the name of the LLPOA after announcing that they will not hold another election meeting until the Fall of 2013.

Robert's Rules, as noted by Wikipedia, provides that 'in the absence of a quorum, any business transacted is null and void' except for certain actions which can be legally taken: To fix the time to which to adjourn, adjourn, recess, or take measures to obtain a quorum." https://en.wikipedia.org/wiki/Quorum Instead of taking measures to obtain a quorum so that an election meeting could be held prior to November 10, 2013, they decided to just continue holding themselves out as LLPOA officers and directors while transfering money in the name of the LLPOA until the November 10, 2013 election meeting.

This is not just a technical objection. For years, the organization has been transferring money out of LLPOA accounts without ever accounting for the money in accordance with Art V, Sec. 2 of the bylaws or any other meaningful way. The funds collected in the name of the LLPOA belong to the LLPOA. Art V, Sec. 2 provides:

> "... The Secretary shall include in the minutes of each meeting of the Association and of the Board of Directors an itemized listing fully identifying all expenditures authorized or approved at each meeting. ..." (emphasis added)

The persons claiming to officers and directors of the LLPOA pretend to believe that their physical control over the two entrance-ways to the lake, plus their false documents recorded in conflict with the LLPOA's charter, deed to the lake, and the holding in *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 459 N.E.2d 1164, (Ill.App. 2 Dist. 1984), has somehow created an incorporated mandatory-membership homeowners' association to which owners of the dominant easement estates must pay money.

Here's an analogy. For them or anyone else to justify their actions by saying that someone has to maintain the lake and that they are the persons to do so, this makes no more sense than a situation that would exist if someone were to go to a dog park where dogs are allowed to run free, took one of the dogs, and then said that the dog owner must pay money to them because they will now maintain the dog.

They do not hold meetings and create minutes in the manner of a bona fide homeowners' association. As can be seen from the mailed minutes when they hold meetings which are open to the easement owners, they typically rubber-stamp decisions which have already been made in private by members of the organization. The open meetings are a sham. Except in rare occasions, the minutes do not reflect motions and discussions because there typically are none. When election meetings are held, the members of the organization run unopposed and conduct such meetings without limiting the counting of the votes to the property owners of the Loch Lomond community as that phrase is understood in the LLPOA's charter. For them, it is not even necessary to be a property owner in the vicinity of the Loch Lomond lake. It appears, for example, that they repeatedly allowed a Zion, Illinois property owner vote and hold office as the corporate secretary. They have also counted written absentee ballots or proxy votes for their elections and then destroy the documents for the absentee ballots or proxy votes thereafter, although they purportedly changed the policy for the destruction of such documents.

In recent years, the organization has collected more than $1,000,000 in the name of the LLPOA but the accounts have never been audited by a CPA. The persons collecting and transferring the money in the name of the LLPOA never comply with Art V, Sec. 2. An examination of the minutes will corroborate this.

It appears that at least some of the persons who have held themselves out as LLPOA officers and directors have transferred money to family members. At least one person who held herself out as a treasurer over an extended period of time (approximately 18 years) engaged in self-dealing and approved the transfer of LLPOA funds to herself but in a manner that did not make it readily known that such funds were being transferred to her. Her husband reported reviewed and approved of the books on one or more occasion as a so-called "independent" party. The husband of another long-term officer, whose child or children received LLPOA funds, reportedly also reviewed and approved of the books on one or more occasion as a so-called "independent" party. The husband of a third person who receives LLPOA funds as an Administrator has similarly reviewed and approved of the LLPOA books from time to time.

When objections have been made with respect to the failure to account for money transfers in accordance with Art V, Sec. 2 of the bylaws, persons transferring money out of LLPOA accounts have said that the financial information can otherwise be obtained by attending the meetings which are open to the LLPOA members generally. But, as mentioned, the LLPOA minutes show that in such meetings the persons holding themselves out as LLPOA officers and directors regularly rubber-stamp earlier decisions to transfer money which were made outside of the presence of the LLPOA members generally. Those claiming to be officers and directors who respond to objections regarding the failure to account for the money, and particularly a failure to comply with Art V, Sec. 2, are insincere with their statements that the objecting parties can otherwise obtain the information by attending their meetings. Even when their open meetings are attended and a written request is made for LLPOA documents, they have shown that their cooperation is minimal and insufficient to meet it.

II. For years, money has been transferred out of LLPOA accounts by persons who did not have and do not have the authority to do so, and without accounting for such transfers, because they were not elected nor appointed by anyone who was elected at election meetings in accordance with the eligibility requirements of the LLPOA charter. Without having the authority to do so, they have also used some of the LLPOA funds to self-finance the undermining of LLPOA own property rights as established by its charter and its deed.

When election meetings have been held, they have been regularly held since 1981 with ineligible persons in violation the LLPOA's charter. Certain persons have knowingly participating in mock election meetings with ineligible persons for the purpose of nominally holding offices to undermine the property rights of the LLPOA. The LLPOA has certain property rights. It has (a) a property right to use its name to the exclusion of others using its name. It has (b) a property right to determine who may be eligible to vote and hold office. And it has (c) a property right to determine, subject to the terms of its deed, who may use its Loch Lomond lake.

As shown by the LLPOA's 1957 charter, the LLPOA was incorporated as a voluntary-membership neighborhood association whose eligibility for membership is limited to those who are property owners in the Loch Lomond "community" as that term was known and understood at the time. This understanding of the term "community" is confirmed by the LLPOA's actions in 1961 when it accepted a deed to the Loch Lomond lake under an agreement with the McIntosh company to not allow persons to use the lake other than owners and occupants of the lots in the three subdivisions subdivided from the McIntosh Acreage.

Under the LLPOA's 1957 charter, lot owners in the outside adjacent Seminary View subdivision are disqualified from participating in LLPOA elections and disqualified from holding LLPOA offices. The same is true for lot owners in the outside adjacent Peramore's subdivision which was developed in the 1970's (and deceptively misnamed by a developer other than the McIntosh company as the Peramore's Fourth Addition to Loch Lomond). The subdivision named Loch Lomond Unit #2 was never added to the Loch Lomond subdivision. The same is true for the subdivision named Loch Lomond Unit #3. Under the LLPOA's 1961 agreement with the McIntosh company as reflected in its deed to the lake, the lot owners in the outside adjacent Seminary View and Peramore's subdivisions are also disqualified from using the lake.

The LLPOA's property rights are traceable to events that began prior to 1957. Prior to that time, the Arthur T. McIntosh company subdivided its McIntosh Acreage into three subdivisions. The three subdivisions from the McIntosh Acreage are described by the plat maps and the CC&Rs for the separate subdivisions named Loch Lomond, Loch Lomond Unit #2, and Loch Lomond Unit #3. None of the CC&Rs require the lot owners to belong to a homeowners' association or any other kind of association. Each of the CC&Rs expressly grant perpetual easements running with the land to the future lot owners with no obligation on the part of the lot owners or the lake owner to maintain the lake in any "size, depth, or condition." (The punctuation varies.)

In 1961, when the McIntosh company conveyed the lake to the LLPOA, the deed memorialized an agreement between the McIntosh company and the LLPOA that the LLPOA would not allow persons to use the lake unless they were owners or occupants of the lots that were subdivided from the McIntosh Acreage. This is found in the last full paragraph of the deed. The deed incorporates by reference the plats for the McIntosh Acreage and identifies them as recorded documents numbered 820686, 903400, and 868693. It also conveyed the lake to the LLPOA subject to:

> "(b) the restrictions, rights and easements declared, granted and reserved in the declarations of restrictions and easements recorded in the Office of the Recorder of Deeds of Lake County, Illinois, as Documents numbered 822721, 903401, and 874973."

In 1981, certain persons caused a false document to be recorded and purportedly transfer property rights, which the recording parties did not have. With the falsely recorded document (#2128748), which was signed exclusively by outside lot owners, they purported created property rights for lot owners in the Seminary View and Peramore's subdivisions to participate in LLPOA elections, hold LLPOA offices, and use the Loch Lomond lake.

It appears that the prime movers behind the recording of the false document are a real estate broker and his wife who have distributed false maps which misrepresent the five subdivisions as being a single subdivision which they or someone else falsely named the "Loch Lomond Subdivision." The real estate broker notarized the signatures of the outside lot owners of the two subdivision who resided in Illinois so that the false document could be recorded. The wife, after the first mock election was held with outside lot owners, held herself out as being the corporate secretary for the LLPOA. They have also sponsored meetings held in the name of the LLPOA at their Century 21 real estate sales building by which persons operating in the name of the LLPOA have threatened to file liens and otherwise interfere with sales of lots in the three McIntosh subdivisions unless the lot owners in those subdivision pay money to those collecting it in the name of the LLPOA.

By thereafter holding the mock election in the name of the LLPOA, the participants have purported to take away the LLPOA's name, its right to determine who may be eligible to vote and hold office, and its right to honor its 1961 agreement so as to respect the declared easement rights and exclude lot owners in the two outside subdivisions from using the Loch Lomond lake. No election has been held since the false document was recorded in 1981 by which the elections have been limited to the lot owners in the Loch Lomond "community" (as that term was understood when the LLPOA was incorporated in 1957).

The charter and the Annual Reports which generally contain the addresses of officers and directors shows that there are persons who have participated in mock elections and then held themselves out as LLPOA officers and directors without the authority to do so. This has been explained to them many times by lot owners with easement rights and others. In some instances, when lot owners have told them that they did not have the authority that they purported to have, those posing as officers and directors have recorded false documents in the name of the LLPOA (the owner of the servient easement property) to purportedly revoke the easement rights of certain lot owners of dominant easement properties. In 1986, they even recorded a false document in the name of the LLPOA (#6050976) to purportedly revoke the easement rights of the elderly founder who created the voluntary-membership association for social and other purposes for those owning lots in the Loch Lomond community that was subdivided from the McIntosh Acreage.

The addresses in the Annual Reports, and the actions of those purporting to be LLPOA officers and directors, show that mock elections have been held with persons who are not lot owners in the Loch Lomond community consisting of the three McIntosh subdivisions. In many instances, the nonqualifying persons own lots in the two adjacent subdivisions known as the Seminary View subdivision and the Peramore's subdivision. In at least one instance, as mentioned above, the person who was held out to be an officer and the corporate secretary did not own a lot in any of the five subdivisions but was a lot owner in the distant suburb of Zion, Illinois and knew what it means to be a property owner.

III. For years, money has been transferred out of LLPOA accounts by persons who did not have and do not have the authority to do so, and without accounting for such transfers, because they've knowingly used the name of the LLPOA as a vehicle to obtain money by fraud. This is an activity not authorized by the LLPOA's charter.

A pattern has evolved from the organization's efforts. When houses are sold and the closing process is completed in the five subdivisions so that the incoming lot owners are no longer represented by closing

attorneys, the organization's members operating in the name of the LLPOA have regularly approached incoming lot buyers, welcomed them to the neighborhood, and given false maps and other false documents to them. After giving an appearance of befriending the incoming lot buyers, they thereafter mail minutes/newsletters and annual billing statements in the name of the LLPOA. After their first contacts, they engage in mail fraud by mailing false billing notices without informing the recipients of the misrepresentations. When lot owners discover the misrepresentations made to them and refuse to pay money, the persons claiming to be LLPOA officers and directors then make their unfriendly intentions know to them.

As part of a "welcome package," they've distributed false maps which misrepresent – **directly contrary to the actual plats plus the terms of the LLPOA's deed and agreement with the McIntosh company** – that the lot owners in all five subdivisions live in a single subdivision and that all of the lot owners have an equal right to use the Loch Lomond lake. There are five separate subdivisions, not one.

The false maps have been accompanied by additional false documents which reinforces those false representations. One of those documents, designated as LLPOA bylaws and misrepresents that the LLPOA "officers" and "directors" will account for the funds, reinforces the false representations and contains a number of additional false representations. Also, one or more of the additional documents, falsely represents that certain persons who participated in mock elections to undermine the LLPOA's property rights are "officers" and/or "directors" of the LLPOA. Such documents regularly include the names of lot owners in the outside Seminary View subdivision and/or the Peramore's subdivision who have been held out as holding LLPOA offices.

The false maps distributed by them (plus the real estate agents mentioned above) also reinforces additional misrepresentations made by them – **directly contrary to the LLPOA's charter and the CC&Rs for the three McIntosh subdivisions plus the terms of the LLPOA's deed** – that the LLPOA and the lot owners in the five subdivisions have obligations to maintain the Loch Lomond lake and pay money to those collecting it in the name of the LLPOA.

In an accompanying "welcome letters" distributed to incoming lot buyers, among other things, they misrepresent that (1) "The purposes for which this Association is organized are as follows: ... to acquire and hold title to the lake and parks of the subdivision of Loch Lomond," and (2) the LLPOA has an agreement with the McIntosh company where the LLPOA is obligated to maintain the lake (even "properly" maintain the lake) as a condition of a continued ownership of the lake. Specifically, the organization misrepresented:

> "The title to Loch Lomond Lake belongs to the L.L.P.O.A. with conditions which were set up by the Arthur T. McIntosh Company when this subdivision was developed. A principal condition was that the title would continue to belong to the Association so long as the lake is properly maintained."

Contrary to the misrepresentation regarding the LLPOA's charter and the purposes for which the LLPOA was organized, the actual words in the LLPOA's charter shows that the LLPOA was not organized "to acquire and hold title to the lake and parks of the subdivision of Loch Lomond." The LLPOA's deed which incorporates the three McIntosh plats and CC&Rs also shows that the LLPOA received the title to the lake subject to the lot owners' easement rights in three subdivisions created by the McIntosh company rather than a single "subdivision of Loch Lomond."

Contrary to the false representation that there is a single "subdivision of Loch Lomond" which the deed and incorporated plats and CC&Rs show is not true, the charter actually shows that membership in the LLPOA is limited to lot owners in the Loch Lomond "community" as that term was understood in 1957 when the only Loch Lomond subdivisions were the ones developed by the McIntosh company.

Contrary to the false representation that the title to the lake belongs to the LLPOA "with conditions which were set up by the Arthur T. McIntosh Company when this subdivision was developed," the LLPOA's charter and deed show that the lake was conveyed to the LLPOA years after the three subdivision were developed. The charter also shows that eligibility for membership in the LLPOA is limited to lot owners in the three subdivisions in the Loch Lomond community. The charter further shows that the LLPOA was created years before the lake transfer by lot owners in the Loch Lomond community without any involvement of the McIntosh company.

Contrary to the false representation that the McIntosh company obligated the LLPOA to maintain the lake and that a principle condition of continued ownership "was that the title would continue to belong to the Association

so long as the lake is properly maintained," the three CC&Rs incorporated by reference all show that the lake owner (in this case the LLPOA) expressly has no obligation to maintain the Loch Lomond lake in any "size, depth, or condition" (the punctuation varies in the CC&Rs).

The fraud conduced in the name of the LLPOA is that the members of the organization solicited money to purportedly protect the lot owners against a fictional threat that they would not be able to maintain the lake as required by a fictional maintenance agreement with the McIntosh company. The third-party threat, as supported by their oral representations, was that a failure to maintain the lake would enable the McIntosh company to reclaim the shallow lake (with a general depth of 4-5'), open the dam to drain it, and build additional houses on the former lake bed to the detriment of existing lot owners.

The organization has successfully used this fictional third-party threat to obtain protection money against the threat for years. But the documents clearly show that there is no agreement between the LLPOA and the McIntosh company for the LLPOA to maintain (or "properly" maintain) the lake. The McIntosh company hasn't even existed for years. Certain parties involved in this scheme are licensed real estate sales persons and have special knowledge. Certain events indicate that they learned that and that other members of the organization learned, in 1985, the McIntosh company announced in the real estate section of the Chicago Tribune that it was going out of business. Subsequent actions in the name of the LLPOA, and particularly the recording of a false document a few weeks later in early 1986, indicates that they were aware of that.

There is also a recorded document (#2087334) showing that the real estate agents involved in this as well as certain other members of the organization have had actual knowledge that the LLPOA has no obligation to maintain the lake. In 1980, they signed a document in which they, on page 2, expressly acknowledged knowing that the LLPOA has no obligation to maintain the lake in any "size, depth or condition." The admissions are valid, although it appears that many of the notarized signatures were backdated to give the false appearance that that the signatures added on January 1, 1980. The real estate broker notarized many of the signatures. The document was ultimately recorded on November 6, 1980.

It appears that each of the persons claiming to be LLPOA officers and directors who owned their properties in the three McIntosh subdivisions prior to 1980, and who have been involved in this scheme for over three decades, expressly admitted knowing that the LLPOA has no obligation to maintain the lake in any "size, depth or condition" when they signed the 1980 document. (#2087334) There is also evidence that others who joined them, such as the person who has recently acted as the LLPOA president, have also been made aware of the fact that they cannot produce a so-called maintenance agreement which they falsely represent as existing in their "welcome letters." The current president could not provide a copy of the so-called agreement, and he signed another document under oath by which he admitted being familiar with certain identified relevant documents.

The organization's members have solicited money in the name of the LLPOA to protect against a third-party threat which they know does not exist. In comparison to the annual amount collected by the nearby voluntary-membership property owners association for Gages Lake with approximately 143 acres (approx $10,000), their fraudulent use of a fictional third-party threat has allowed them to collect approximately $160,000 – $170,000 to purportedly maintain a smaller 80-acre lake. In 2008, the members of the organization expressed their desire to increase collections to "four or five times" their current level, or about $800,000 annually until I uncovered certain falsehoods and brought that to the attention of other lot owners in the McIntosh subdivision. By coincidence or otherwise, a long-term treasurer decided to not-run for re-election and the then president who was re-elected decided to resign after being re-elected. Nonetheless, to encourage a continued payment of so-called dues to those collecting such dues in the name of the LLPOA, one or more persons started a rumor that the ownership of the lake would be lost if they were unable to continue to collect the so-called dues at their current level.

The threat to lose the ownership of the lake because of a fictional third-party threat is apparently a powerful and influential one. It allows those collecting money in the name of the LLPOA to collect and spend as much money as they want from LLPOA accounts without the legal authority to do so and without accounting for the funds as required by the bylaws.

Because of the organization's act of taking physical possession of the entrance ways to the lake with locked gates and gate guards (sometimes called "lifeguards") and the organization's successful fraud with its fictional third-party threat, some easement owners have continued to pay protection money to those who collect it in the

name of the LLPOA. Some have asked, if they don't pay money to them, who will maintain the lake? But the lake was maintained for decades on a voluntary basis before this fraudulent scheme was put into action.

When the organization has collected more than 20 times the amount collected or a per-acre basis by a nearby voluntary-membership property owners' association for mosquito spraying, etc., related to the 143-acre Gages Lake, they didn't just collect the much greater amount by merely asking easement owners for it. They collect approximately $160,000 - $170,000 per year, but nobody outside of the small organization and other connected parties knows how much is spent for mosquito spraying or any other lake-maintenance items because the organization acting in the name of the LLPOA won't account for the funds as required by Art V, Sec. 2 of the LLPOA bylaws. The annual reviews of the LLPOA's books and records by spouses and other parties sympathetic to the members of the organization are a joke. Those who conduct such reviews never review the books and records to determine whether funds have only been transferred out of LLPOA accounts contrary to the LLPOA's charter to support the fictional claim that the organization is operating a mandatory-membership homeowners' association. It never disturbs them that money has been transferred for fraudulent activities and to undermine the LLPOA's property rights as established by its charter and its deed.

IV. For years, money has been transferred out of LLPOA accounts by persons who did not have and do not have the authority to do so, and without accounting for such transfers, because they operated together as an organization to influence the LLPOA and misused the LLPOA's name and property to illegally collect the money by mail, with additional illegal activities not authorized by the LLPOA's charter. They have

> (1) recorded and giving effect to their falsely recorded documents as a way to cause confusion, compel membership in an association in violation of 720 ILCS § 5/12-6.5, and illegally delay real estate closings in violation of 720 ILCS § 5/47-5(14), and
> (2) illegally blocked easement rights of the mail recipients and lot owners in violation of 720 ILCS § 5/47-5(5) to compel membership in an association in violation of 720 ILCS § 5/12-6.5, and illegally delay real estate closings in violation of 720 ILCS § 5/47-5(14).

All adults of at least normal intelligence know that they cannot create or transfer property rights which they do not have to themselves or anyone else by recording false with the recorder's office. Also, all adults of at least normal intelligence know that they cannot take possession of property which does not belong to them and demand that another person who is entitled to use the property pay money for a nonexistent debt.

720 ILCS § 5/12-6.5 prohibits certain conduct and provides:

> "Compelling organization membership of persons. 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)
>
> "Any person of the age of 18 years or older who knowingly, expressly or impliedly, threatens to do bodily harm or does bodily harm to a person under 18 years of age or uses any other criminally unlawful means to solicit or cause any person under 18 years of age to join, or deter any person under 18 years of age from leaving, any organization or association regardless of the nature of such organization or association is guilty of a Class 1 felony."
>
> "A person convicted of an offense under this Section shall not be eligible to receive a sentence of probation, conditional discharge, or periodic imprisonment."

By the plain language of the statute, the prohibited conduct is not limited to the activities of conventional street gangs and labor unions.

720 ILCS § 5/47-5(14) makes it a crime

> "To harass, intimidate, or threaten a person who is about to sell or lease or has sold or leased a residence or other real property or is about to buy or lease or has bought or leased a residence or other real property, when the harassment, intimidation, or threat relates to a person's attempt to sell, buy, or lease a residence, or other real property, or refers to a person's sale, purchase, or lease of a residence or other real property." (emphasis added)

720 ILCS § 5/47-5(14) makes it a crime

> "To obstruct or encroach upon public highways, private ways, streets, alleys, commons, landing places, and ways to burying places." (emphasis added)

The members of the organization use the pretext of pretending to believe that the documents that they recorded has created a homeowners' association.

Their actions and their words show that they don't believe it.

Demands for protection money — The organization in fact consists of identifiable persons who have illegally obtained and maintained control of a nonprofit corporation. They have done so over a period of years for the purpose of operating an enterprise of obtaining money by mail by exploiting a lake owned by the nonprofit corporation subject to the known easement rights of nearby lot owners who under the applicable CC&Rs. They know that the nonprofit corporation and the lot owners have no obligation under the CC&Rs applicable to the three subdivisions created by the McIntosh company to maintain the lake in any size, depth, or condition.

The members of the organization have not only solicited protection money to protect against a non-existent threat which they know from the nonprofit corporation's documents to not exist, but they have knowingly physically interfered with easement rights and demanded money which the easement owners do not owe so that the easement owners can protect themselves against their threats to (1) continue to physically obstruct easement rights running with the land and (2) delay real estate sales closings by informing home buyers that they will not allow such buyers to use the easement property unless the home sellers pay fictional debts which the members of the organization know do not exist. Although they never account for money transfers as required under the bylaws, they often boast about collecting so-called back dues related to real estate closings and often report such amounts in their minutes/newsletters as "back dues." Since they can always offer to enter into a pretend accord-and-satisfaction for offering to settle their fictional claim for less than the cost of attorney fees, a number of home sellers have agreed to pay amounts.

In short, the members of the small organization are operating a small protection racket.

Mail fraud — They are using the LLPOA as a type of shell corporation for their enterprise. They also rely heavily upon the U.S. mail and have sent at least 50,000 mailings in the last 10 years consisting of false billing statements and newsletters (designated by them as "minutes") to perpetuate a hoax that they purportedly believe that they are legitimately operating a mandatory-membership homeowners' association so that they can raise false disputes and delay mortgage financing at the time of real estate sales or re-financing.

Financial significance — In comparison to some protection rackets, this one is a small one. As mentioned above, the participants have collected over $1 million dollars in the last 10 years which they have not accounted for in accordance with the LLPOA's bylaws, and particularly Art V, Sec. 2 of the bylaws or any other meaningful way. Although the funds collected in the name of the LLPOA belong to the LLPOA, they treat the funds as belonging to them which they can use in part to perpetual their hoax. In their minutes/newsletters, they never comply with Art V, Sec. 2 which provides:

> "... The Secretary shall include in the minutes of each meeting of the Association and of the Board of Directors an itemized listing fully identifying all expenditures authorized or approved at each meeting. ..." (emphasis added)

Instead of recognizing that the Federal civil RICO statutes provide for treble damages and attorney fees for those who have sustained losses from embezzlement and extortion, they treat their use of the LLPOA name as providing them with absolute immunity. They don't even recognize that a bona fide representative of the LLPOA could sue them under a civil RICO theory for the funds that they took without authority and without accounting for such funds. As mentioned above, they have collected over $1 million dollars and used unknown amounts contrary to the LLPOA's charter in furtherance of their scheme. Yet they treat so-called financial reviews by family members related to the participants, and other friendly persons, as giving them immunity for whatever they have done with the funds.

Knowing recording of false documents — They have shown by their actions and their words that they are not operating a bona fide homeowners' association but that they have merely recorded a number of false documents (1) contrary to the LLPOA's charter, (2) contrary to the LLPOA's deed to the lake plus the related CC&Rs, and (3) contrary to the holding in *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 459 N.E.2d 1164, (Ill.App. 2 Dist. 1984).

Admission by conduct — As noted above, in 1957, the LLPOA was formed as a voluntary-membership association similar to the one described in the paragraph 5 of *Lakeland* case. Qualifications for membership is limited in the LLPOA's charter to lot owners in the three Loch Lomond subdivisions created by the McIntosh company. In all of the 55-plus years since 1957, no liens have ever been recorded against any of the nonpaying lot owners. A failure to file liens while claiming that significant amounts are owed as past-due amounts over a period of years is, of course, an admission by conduct that they know that their assertion that the LLPOA has a status of a homeowners' association is just a pretext.

Express Admissions — Not only have they such knowledge by conduct by not filing liens against nonpaying lot owners, and specifically admitted that by conduct by not filing liens even for any portion of the $188,000 that they said was overdue on page 4 of their June 2010 minutes/newsletter when they said that they would hire your firm to collect it, they also expressly admitted knowing that they cannot file their threatened liens. Initially in their "welcome" letters that they issued in the name of the LLPOA after 1993, and in various minutes/newsletters, they threatened to file liens against nonpaying lot owners. In a web site that they began maintaining in 2008, they also threatened to file liens against nonpaying lot owners.

In contrast, as one example of their express admission of knowledge, they wrote on page 4 of the November 2008 minutes/newsletter (enclosed),

> "The Association can not put a lien on a property for not paying back dues."
> ...
> "... we would probably lose if we took a resident to court to collect back dues. We can not change the covenant without every person in the Association agreeing to it."

They also admitted knowing,

> "We can't collect back dues in a 'collection notice' fashion."

They know from their collection activities that approximately 25% or more of the lot owners are age 65 or older, as am I. They know from experience that some of the elderly are susceptible to threats and some will pay money that they do not owe just to avoid the threats. Notwithstanding the express admissions of their knowledge that they cannot file liens, they also threatened that they could choose to take possession of the houses owned by nonpaying lot owners while writing in their Nov 2008 minutes/newsletter:

> "We would hate to see that happen"

In addition, while expressly admitting that they could not legitimately file liens, they also threatened,

> "If you are selling and you owe back dues, that could be a factor in selling your home."

The LLPOA has existed for more than 50 years. On page 4 of their June 1, 2010 minutes/newsletter in which they referred to hiring you in the name of the LLPOA, they expressly made another admission of knowledge. They wrote,

> "<u>In the past, our attorneys have told us that we're on shaky ground regarding dues collection.</u> Have we just been talking to the wrong people? Attorney Nesbitt (sic) specializes in homeowner association law, and our previous attorneys may not have had the same areas of expertise." (emphasis added)

False assertion of fiduciary duty to collect money from easement owners — In a manner contrary to the express terms of the CC&Rs for the three subdivisions which negate an obligation to maintain the lake in any "size, depth, or condition," and in a manner contrary to the *Lakeland* holding by which no one can legitimately compel lot owners with easement rights to join an association, deter them from leaving an association, and pay money contrary to the subdivisions' CC&Rs, they referred to your name to imply that you told them,

> "The Board has a fiduciary responsibility to make sure all property owners share the cost of maintaining Association assets by paying annual dues."

Although they may have misled others into believe that you said that by implying that, I question whether you said that. In contrast, your law firm has clearly stated in an IICLE book and your firm's web site:

> "In order to create a ... homeowners' association, <u>there must be a unanimous subscription to an underlying document by the owners of the property</u> — a charter, bylaws, a trust agreement and/or proprietary lease (coop), or a recorded set of covenants and bylaws that run with the land. Anything less creates a "voluntary" association in which membership is not mandatory and rules are not enforceable against nonmembers." (emphasis added)

— Attorney Jordan I. Shifrin of Kovitz, Shifrin, and Nesbit
Illinois Condominium Law, 10.6 (IICLE book for Illinois Attorneys)

I suggest that there are fiduciary duties to remain true to the LLPOA's charter, the terms of the LLPOA's deed, and the LLPOA's bylaws which all funds to be accounted for. Those operating in the name of the LLPOA have a duty, if you will, to not record false documents to purportedly create and/or transfer property rights which neither they nor the LLPOA have. The CC&Rs do not require any easement owners to join and pay money to an association as a condition to having easement rights. The CC&Rs, which cannot be unilaterally modified by them, expressly do not require easement owners to maintain the lake in any "size, depth, or condition." Those operating in the name of the LLPOA have a duty to refrain from making fraudulent misrepresentations, to refrain from obstructing easements, and refrain from making illegal threats to interfere with sales.

False use of your name — While using your name in the June 2010 minutes/newsletter, they also threatened,

> "Property owners who do not pay the dues owed after receiving the attorney letter could then be subject to court action, which would include legal fees as well as the dues owed. Attorney Nesbitt (sic) stated that there was very sold (sic) legal precedent in the Illinois court system for collection of Association dues based on increased market value for all properties in an Association regardless of their location and whether or not the Association assets were utilized by the property owner." (emphasis added)

You know that this is not true. Not only are such representations made in your name contrary to the CC&Rs and the *Lakeland* holding, three years have passed since the invocation of your name in the June 2010 minutes/newsletter and you have not made an effort to collect the so-called $188,000 in back dues, or any other amount, by filing liens or otherwise initiating any lawsuits.

Instead, the participants in this scheme implied that you were fully informed and gave such advice, but they then used LLPOA funds to otherwise hire a collection agent in Libertyville to purportedly collect the so-called "back dues." This is another admission by conduct. He has chosen to join the organization by knowingly mailing billing false billing notices. I fully informed him of the activities and provided him with electronic copies of the relevant documents. In addition, after he made an effort to collect so-called back dues from me, I mailed a letter to him by which I asserted my rights under the Fair Debt Collection Practice Act and told him not to mail another collection letter to me. He has not made another collection effort since that time. This, too, is an admission by conduct.

Paper Trails — Although the members of the organization will not account for LLPOA funds, and particularly will not comply with Art V, Sec. 2 which requires an itemized listing fully identifying all expenditures in the minutes, they have left paper trails for their small protection-racket activities, including public ones. In addition to mailing thousands of false billing notices and thousands of minutes/newsletters in which the hoax of operating a mandatory-membership homeowners' association has been perpetrated, they also filed false Annual Reports with the Illinois Secretary of State in which they either plainly claimed that the LLPOA was (1) a "homeowners' association" or otherwise expressly claimed that the LLPOA was (2) a "Homeowners' Association which administers a common-interest community as defined in Section 9-102 of the Code of Civil Procedure" (i.e., 735 ILCS 5/9-102). The also recorded a number of false documents.

The subsequent members of the organization have approved, ratified, and continued the fraudulent activities of the earlier and original members.

Under the LLPOA's charter, the participants are not authorized to act in the name of the LLPOA and compel lot owners to be members of the LLPOA in violation of 720 ILCS § 5/12-6.5, 720 ILCS § 5/47-5(14), and 720 ILCS § 5/47-5(5).

J. G. Wahlert
1303 Dunleer Drive
Mundelein, IL 60060
847-566-1218