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California HOA/Condo Owners Do Not Have the Right to Have Their Attorney Attend the Association's Board Meetings

By David Swedelson, Founding Partner

It is a common scenario. A homeowner (usually disgruntled or in trouble with their association) either wants their attorney to attend a board meeting with them or in their place. Often, we hear about it after the meeting where the attorney appeared on behalf of their client and intimidated the board. This situation raises three hotly contested issues: (1) Do homeowners have the right to have their attorney present at board meetings? (2) Can homeowners delegate their right to attend board meetings to nonmembers? and (3) Does it make a difference in delegating powers to attend board meetings if the owner of a unit is a natural person or an entity? We have not had a solid answer to these questions. That is, until the Court of Appeal came down with its decision in the case of *SB Liberty, LLC, v. Isla Verde Association, Inc.* Based on this decision, we can definitively say that the answer to all three questions is NO.

What *SB Liberty* Decided

The Court ruled in *SB Liberty* (in May of 2013) that Section 1363.05 of the California Civil Code (now found in Civil Code Section 4925) specifically states that *members* may attend an association's board meetings. This means that owners cannot have their attorney, or any other nonmember, attend in their place.

SB Liberty owned property in a community association, and therefore it was an undisputed member of the association. *SB Liberty* attempted to have its attorney attend a board meeting in its place. When the association refused to allow the attorney access to the meeting, *SB Liberty* gave its attorney a Power of Attorney. However, the Power of Attorney was limited to attendance at the board meeting. It did not even rise to the level of a proxy, because it did not allow the attorney to vote on behalf of *SB Liberty* (and owners do not vote at board meetings in any event).

It was the association's contention that "[t]here is no legal basis for allowing a member's legal counsel to appear before the Board without his client present, and without [the Association's] counsel at the Board meeting." The Court of Appeal agreed.

SB Liberty argued that because the owner of the unit was an entity and not a natural person, the entity/corporation had the right to appoint an attorney to attend meetings. The Court ruled that the attorney was not a member of *SB Liberty*, and therefore had no standing to attend the meeting. *SB Liberty* would have to have an officer of the corporation attend the meetings.



What *SB Liberty* Did Not Decide

Although *SB Liberty* settled some issues, there are important issues outstanding. The Court's decision might have been different if *SB Liberty* had given the Power of Attorney to someone who did have the right to vote or to make decisions on behalf of the owner. The Court did not answer that question.

The circumstances might also be different if the owner is appearing at a board meeting for a disciplinary matter. It is likely that a court would want to allow the owner to have their attorney present. The Court's decision might also have been different if the bylaws or CC&Rs did provide the nonmember with the right to attend an association board meeting. So it is important, especially when amending and restating the CC&Rs or bylaws, to ensure that they provide that only association members can attend board or association member meetings.

What Can Associations Do?

For a board to avoid being blindsided by an attorney appearing with a disgruntled owner at a hearing, the board should ask the homeowner in advance if the homeowner intends to bring an attorney. The board could even go so far as to tell the owner that if they do not advise the board in advance that they are going to have an attorney present, then they are not going to be permitted to have an attorney. This way, the board can decide if it wants to have its own attorney present.

What *SB Liberty* tells us is that if an attorney appears at a board meeting with an owner or in place of an owner, the board has the right and the power to tell the attorney to leave, because the association's board or member meetings are for members only. The board can advise the attorney that its authority is the *SB Liberty* case. The board can also cite the association's governing documents, as long as they do not permit nonmembers to attend meetings.

The Court's decision in *SB Liberty* highlights the reality that an association's governing documents provide the best source of authority (or the lack thereof) for whether a nonmember can attend an association board meeting. Regardless of whether the member in this case was an entity or a natural person, the Court was adamant that "the Board had the authority to determine how to conduct its meetings and, thus, the power to prevent a nonmember from attending and participating in those meetings." This gives an association plenty of power, through its governing documents, to determine who is permitted at its board meetings.

David Swedelson is a condo lawyer and HOA attorney and a founding/senior partner at SwedelsonGottlieb, Community Association Attorneys. The firm represents community associations throughout California. David can be contacted via email: dcs@sghoalaw.com.