

## **Court Provides Guidance on Who Can Attend Board Meetings**

### **SB Liberty v. Isla Verde Association Inc.**

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A longstanding issue of ambiguity and occasional dispute arises when a member tries to designate someone to attend a board meeting for them. Civil Code § 4925 (“Open Meeting Act”) states that “any member of the association may attend meetings of the board of directors of the association.” A dispute often arises when a homeowner wants to bring an attorney to a board meeting, or have their attorney attend a board meeting in their place. The Court of Appeals took a big step toward resolving such disputes when it issued its opinion in SB Liberty LLC v. Isla Verde Association.

The SB Liberty Court was concerned with whether an attorney was the proper representative of an LLC in order to attend a board meeting. But the opinion has broader impact in other areas of community association governance including whether that LLC member can serve on the Board and the authority of the board to determine how to conduct its own meetings. What is clear from the opinion is that a member cannot send a “representative of its own choosing” to a board or members meeting and that the board has the authority to exclude nonmembers from its meetings.

Isla Verde is an association of 87 homes in Solana Beach, into which Gregg and Janet Short bought a residence in 2006. They put ownership of the property first in a family trust, and later in an LLC called “SB Liberty LLC.” For reasons unexplained in the appellate decision, the Shorts sought to have their attorney attend a board meeting on their behalf. The Shorts executed a “Specific Power of Attorney” purporting to give their attorney the right to attend board meetings at their behalf. The association rejected that power of attorney as a basis for attendance, noting that it did not give the attorney permission to vote the client’s membership interest.

The Shorts, through their LLC, SB Liberty, unsuccessfully sought an injunction to stop the association from banning their attorney from attending board meetings. In explaining its decision, the Appellate Court, referring to the Limited Liability Company Act (Corporations Code 17150 et. Seq.), reasoned:

- That the “management of the business and affairs of a limited liability company is vested in its members unless the articles of the organization provide otherwise.”
- Member is defined in the Act as a person who has been admitted to an LLC in accordance with the LLC’s articles, or operating agreement, or an assignee of an interest in the LLC.
- Under the Act, if the articles so provide, the LLC may be managed by one or more managers who need not be members. In other words, the LLC manager must either be a member of the LLC or a designated authorized non-member manager.

The Court concluded that:

- The Open Meeting Act gives members the right to attend, and the lawyer is not a member;
- The governing documents give rights to the members; and
- The LLC’s proper representative would be its designated “manager” (Mr. Short) or a member of the LLC, and the attorney was neither.

On a somewhat related issue, the Court of Appeals rejected the SB Liberty's contention that the power of attorney given to its lawyer was sufficient to allow the lawyer to represent SB Liberty in Board meetings. The Court found that the only membership rights that the Isla Verde association's governing documents allowed to be transferred to a third-party representative was the right to vote by proxy which was not transferred to the LLC lawyer by SB Liberty:

The lessons drawn from this ruling are several:

1. A "member" does not include the member's lawyer.
2. A "member" can be an entity but its representative must be a properly authorized LLC manager or member, or corporate officer, or trustee of a trust.
3. A Power of Attorney completely transferring management and control of the membership, including voting rights, may be sufficient to allow a non-member to attend in the place of the member.
4. The association can ban attorneys from attending board meetings, with or without the attorney's member client.

The SB Liberty opinion upholds the board's authority to exclude from its meetings anyone not a member. Documented proof of this should be requested and provided to the board, before a determination is made as to whether that person can attend the board meetings. With respect to an LLC, the documentation should include a copy of the LLC's articles of organization and the operating agreement. This opinion also extends to board member qualifications for LLCs or corporations in associations whose bylaws limit directors to members. In such cases, any LLC or corporate representative seeking to serve should provide proof that they either are a "member" or designated non-member manager of an LLC or designated corporate officer.

Your association board meetings are for members, and unless your governing documents say otherwise, only members should be permitted to attend.