

Association Legal Counsel... Who Do They Really Represent?

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Bright Horizons Community Association's Board of Directors and a group of homeowners have had a very strong disagreement about some of the decisions the Board has made regarding the replacement of lighting at the entry to the community. It has become so heated that the Board has contacted their legal counsel regarding the situation. The "group" is unhappy about this because it is their contention that the attorney works for all of the homeowners and not just the Board and it seems unfair because the Board has the benefit of the attorney while the owners would have to put out their own funds to hire one. Who does the attorney really represent?

Of course, Bright Horizons is a fictitious community, but in real life, I have had the question being posed come up. On several occasions, it was because the Board President was initiating the assistance of legal counsel without the consent of the Board, on an issue that was of the President's making.

So, who does he or she really represent? After all, it is the assessments the members pay in that provide the funds from which the attorney is to be paid. Doesn't he/she represent them? This seems to be a common source of discontent in associations. However, the law recognizes the fiction of the corporation as a legal person. Therefore, a corporation is granted by the law most of the legal powers of individuals, at least with respect to commercial matters. Such powers include the power to enter into contracts, the power to sue and be sued, and the power to hold title to property.

When an attorney represents a corporation, it is the corporation to which that attorney owes his or her duty of loyalty. The attorney does not represent "the board", nor any member on the board. Obviously, a corporation cannot act except through natural persons, which are the agents of the corporation empowered by law to undertake the affairs of the corporation. These agents typically include directors and officers of the association and others, such as executive employees or managers.

The Association, like so many publicly traded, for profit corporations, have shareholders. Shareholders in a publicly traded company buy stock. The funds raised by the corporation through stock sales may help pay for the legal needs of the corporation, but the shareholders are not privy to the advice that the corporate counsel provides to the appropriate corporate representatives. The same is true for the Association. While assessments may provide the funds to pay for the association's legal counsel, the members are not represented personally nor are they generally privy to the advice provided by the attorney to the Association