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## The Business Judgment Rule

Board members often ask us, “What is the standard of conduct for the board of a common interest community?” The standard of conduct is known as the Business Judgment Rule. According to this rule of law, actions taken by directors of a nonprofit corporation in good faith, that are within the powers of the corporation, and that reflect a reasonable and honest exercise of judgment, are valid actions in accordance with the Business Judgment Rule. Not only does the Business Judgment Rule provide a standard by which directors can measure their conduct, it also provides a legal defense to many claims against the association.

Under the Business Judgment Rule, a court should not interfere with or regulate the conduct of the board when the board has acted reasonably and in good faith. In fact, courts have held that directors of a common interest community who have acted in good faith and not arbitrarily have not breached their fiduciary duty.

Another aspect of the Business Judgment Rule is that a director is entitled to rely on information, opinions, reports, or statements prepared or presented by legal counsel, accountants, or other professionals or experts. This doctrine also provides a legal defense, sometimes referred to as the defense of “advice of counsel.” In a recent trial, an association we represent was able to prevail on all claims asserted against it, because the judge found that the board had exercised honest business judgment after seeking advice of legal counsel and other professional consultants.

Directors of common interest communities are not expected to know everything. It is reasonable for a board to seek advice and then follow that advice in making decisions that affect the community. By seeking advice, not only can the board can feel more confident in its decisions, but the act of seeking advice creates an important legal defense that would not be available if the board had simply just made those decisions.

So the next time you contact your community association attorney for advice, know that you have done your part to establish the defense of “advice of counsel” and that you have taken a step towards compliance with the Business Judgment Rule.

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