

Application of the Business Judgment Rule to Community Association Board of Directors

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Written by Hans C. Wahl, Esq.

The board of directors of community associations are responsible for making important decisions affecting the community and its members. As a result, disputes sometimes arise between the association and its members. In the event the dispute evolves into a lawsuit, the business judgment rule will protect directors from personal liability so long as they did not breach their fiduciary duty.

Fiduciary Duty of Directors

Community associations, such as HOAs and condominium associations, are governed by an elected board of directors. The duties of directors are codified in section 607.0830(1), Florida Statutes, which states that each member of a board of directors must act:

- In good faith; and
- In a manner he or she reasonably believes to be in the best interests of the corporation.

The directors of community associations owe this fiduciary duty to the members of the association. Generally, the decisions of directors will not be questioned unless there is a showing of

fraud, criminal activity, self-dealing, dishonesty, or incompetency. *Sonny Boy, L.L.C. v. Asnani*, 879 So. 2d 25, 28 (Fla. Dist. Ct. App. 2004) (explaining that directors of a condominium association were not personally liable for failing to maintain and repair common elements because there was no showing of fraud, self-dealing, or unjust enrichment).

Application of Business Judgment Rule to Community Associations

The business judgment rule operates by creating a presumption that the board of directors acted in compliance with their fiduciary duty. Traditionally, the business judgment rule applied to protect corporate directors from personal liability. However, Florida courts have adopted and applied the business judgment rule to decisions made by the board of directors of community associations as well.

In *Miller v. Homeland Prop. Owners Ass'n, Inc.*, 284 So. 3d 534, 537 (Fla. 4th DCA 2019) (quoting *Hollywood Towers Condo. Ass'n, Inc. v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010)), the court held that deference to community associations' decisions must be given when:

1. The association had the contractual or statutory authority to perform the relevant acts; and
2. The board acted reasonably—that is, not arbitrary, capricious, or in bad faith.

Courts will look to the community association's governing documents, such as the association's declaration, to determine

whether the association had authority to perform the relevant acts. Proving an association had authority to perform a relevant act is usually not difficult and is often not disputed because express authority is usually found in the governing documents. For example, in *Garcia v. Crescent Plaza Condo. Ass'n, Inc.*, 813 So. 2d 975 (Fla. 2d DCA 2002), a commercial condominium owner brought an action against the condominium association whereby the association leased three common element parking spaces to the association's president for a nominal fee. The court found that the declaration expressly provided the association with the authority to lease a portion of the common element parking spaces. However, there remained a genuine issue of material fact as to whether the association acted reasonably.

Whether an association's board of directors acted reasonably is a question of fact and depends on the circumstances of each case. Directors are allowed to rely on information and advice from outside professionals who the directors believe are competent, as well as rely on advice from corporate officers or employees when making important decisions. For example, in another case, a homeowner brought a lawsuit against the property association alleging the association failed to enforce its restrictions against his neighbor. The homeowner's neighbor built a garage that allegedly violated the association's use regulations regarding building height and roof shape. There was no dispute that the association had the authority to enforce its use restrictions pursuant to the association's governing documents. The court, in applying the business judgment rule, held that the association acted reasonably because the association relied on opinions from

a construction firm, a county official, and its own attorney when they found the garage complied with the use restrictions.

Conclusion

The business judgment rule will be a successful defense to claims against an association and its board of directors if: (1) the association had authority to perform the action, and (2) the association acted reasonably. If you are considering volunteering for a seat on the board of directors of a community association, or you are already, you must familiarize yourself with the association's governing documents and understand the scope of authority in making important decisions. Before taking any action, you must be confident that the action is reasonable. An association's board of directors should always consult with a competent attorney before making important decisions and taking action.

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