

## BUSINESS JUDGMENT RULE

**Davis-Stirling Act.** As provided for in **Civil Code §1365.7(a)**, a **volunteer** officer or director is not personally liable in excess of the association's insurance for bodily injury, emotional distress, wrongful death, or property damage or loss as a result of the tortuous act or omission of the officer or director if all of the following criteria are met:

1. The act or omission was performed within the scope of the officer's or director's duties.
2. The act or omission was performed in good faith.
3. The act or omission was not willful, wanton, or **grossly negligent**.
4. The association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance which shall include coverage for (A) general liability of the association and (B) individual liability of officers and directors of the association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the following minimum amount:
  - At least \$500,000 if the association consists of 100 or fewer separate interests;
  - At least \$1,000,000 if the association consists of more than 100 separate interests.

**Corporations Code.** The Corporations Code provides similar protections. Even though officers and directors are **fiduciaries**, they can make poor decisions that result in damage or loss, but still avoid personal liability if they performed their duties:

1. In good faith,
2. In a manner which the director believes to be in the best interests of the corporation, and
3. With such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. **Corp. Code §7231(c)**.

**Lamden Decision.** Board decisions cannot be second-guessed by members or the courts, even if a reasonable person would have acted differently, provided the board acted (i) in good faith, (ii) in the best interests of the association, and (iii) upon reasonable investigation. **Lamden v. La Jolla Shores Clubdominium HOA**. Rather than suing the board because a member disagrees with a particular decision by the board, members may run for election to the board or **recall the**

**board.**

## POWERS OF BOARD AND MEMBERSHIP

Associations are not pure democracies where members can vote on all issues. Instead, they are representative democracies where powers are delegated to elected representatives (the board of directors) and certain limited powers are reserved to the membership. Representative democracy is the model used throughout the Western world.

**Membership Authority.** The rights/powers reserved to owners are described in the **governing documents** and are generally limited to the following powers:

- to **elect** a board of directors
- to **remove** directors from the board
- to call **special meetings** of the membership
- to **amend** the CC&Rs and bylaws
- to approve regular **assessments** over 20% and special assessments over 5%
- to **attend** open meetings of the board
- to **access** their property
- to use the **common areas**
- to **inspect** the association's records

**No Veto Power.** Because of the division of authority between the membership and the board, members do not have a direct veto over the board's actions (except for **rule changes**). Rather, the power to veto is indirect. If members are unhappy with board actions (or inaction), the membership can **remove the board** or wait until the annual meeting and elect a new board.

**Board Authority.** By law, corporations must have **boards of directors**. The powers delegated to boards generally include the following:

- manage the association
- adopt and enforce rules and regulations
- enforce the CC&Rs and bylaws
- contract for services
- levy and collect regular assessments
- levy and collect special assessments up to 5% without membership approval
- levy and collect emergency special assessments
- pay expenses incurred by the association

- prepare and adopt budgets
- repair and maintain the common areas
- **insure** the association
- disburse reserve monies
- invest funds
- call membership meetings and appoint inspectors of election
- appoint and remove **officers**
- appoint **directors** to fill vacancies
- establish and dissolve **committees**
- **initiate and defend** litigation

**Judicial Deference.** Courts will **defer** to board decisions, even if the decisions are not the "best" decisions, provided the board made a reasonable investigation, and its decision was in good faith with the best interests of the association in mind.