

The following slides are a summary discussion about the business judgment rule as it applies to California for profit corporations.

In California different statutory business judgment rules apply to nonprofits and religious organizations. And different states have their own versions of the business judgment rule. You should check on your own specific situation and rules to be sure. However, there do tend to be similarities but also with differences.

I suggest that governmental entities also adopt and follow these rules as prudent business practices.

You can find additional information about me on the last slide, and on my blog addresses below and on the last slide, and I am also on LinkedIn, Twitter, and other media.

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The business judgment rule provides a director with a defense to personal liability, holding that as a principle of law, a director who satisfies the business judgment rule has satisfied his or her fiduciary duties, including a director who serves on a board committee. The rule also provides a good overall approach for directors and board committee members.

The business judgment rule provides one standard of care - other standards may also apply to specific tasks and responsibilities.

In some states the rule is codified by statute while in other states the rule is established by case law. See, for example, Cal. Corp. Code §309 and Del. Gen. Corp. Law §141 for California and Delaware corporations, respectively, in addition to relevant case law.

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In summary, as a general principle the business judgment rule provides that a director should undertake his or her duties:

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-In **good faith**, with **honesty** and **without self-dealing, conflict or improper personal benefit** (and you should also consider your **independence and appearance of independence** from the issues, people and organizations that are involved, as situationally appropriate);

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-In a manner that the director reasonably believes to be in the best interests of the corporation and its shareholders; and

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-With the care, including reasonable inquiry, that an ordinarily prudent person in a like position with like expertise would use under similar circumstances.

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Reliance Upon Other People

In the course and scope of performing his or her duties, a director must necessarily obtain information from and rely upon other people.

The director is not involved in the day-to-day operations of the business. The director provides an oversight function.

Pursuant to the business judgment rule, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the following:

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-Officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the relevant matters;

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-Legal counsel, independent accountants or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

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-A committee of the board on which the director does not serve, as to matters within that committee's designated authority, so long as the director acts in good faith, after reasonable inquiry as warranted by the circumstances, and without knowledge that would cause reliance to be unwarranted.

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Of course, accomplishing director responsibilities is also a function of the board's overall governance, operations, expertise, functioning and atmosphere of professionalism.

And remember to do annual or more often evaluations of the board and its committees.

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Thank you for viewing these materials. I'm David Tate. I am a California attorney. My law practice primarily involves litigation and disputes, and services as a mediator in the following areas: business and businesses, trusts, estates, elder and elder abuse, real estate, governance, workplace, compliance, and investigations, including contentious administrations and other situations.

I also advise people and businesses on fiduciary, corporate, officer, board and director, audit committee, shareholder, founder, owner, investor and VC governance, compliance, investigations, independence and conflicts of interest, self-evaluation, and authority, responsibilities and rights.

My blog addresses are

[Trust, Estate, Conservatorship, Elder, and Elder Abuse, Etc. Blog](#)

[Business, D&O, Board, Audit Committee, Governance, Etc. Blog](#)

You can also connect with me on LinkedIn and Twitter. And I am also an inactive CPA.

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