

Directors, officers, and employees of a corporation owe fiduciary duties to its shareholders. Those general fiduciary duties owed to shareholders include the duty of care and the duty of loyalty.

★★★★ A. Duty of Care

Directors and officers owe the corporation a duty of care. This duty includes the duty to take reasonable steps to monitor the corporation's management; the duty to remain informed about the corporation's business; and the duty to be satisfied that any proposals are in the corporation's best interests. In essence, duty of care requires fiduciaries to act carefully when acting on behalf of the corporation.

★★★★ 1) GOOD-FAITH

This duty has been interpreted to require that fiduciary discharge his duties "in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he reasonably believes to be in the best interests of the corporation." RMBCA § 8.30(a). A fiduciary is entitled to rely on information from officers or employees whom she believes to be reliable. RMBCA § 8.30(b). However, a fiduciary is not acting in good faith if she has knowledge of the matter at issue which makes her reliance unjustified. RMBCA § 8.30(c). In general, the duty of care requires that a director take steps to become informed about facts before taking any action. Henn at § 234.

★★★★ 2) BUSINESS JUDGMENT RULE

The business judgment rule is a doctrine that protects officers and directors of a corporation from personal liability so long as the actors acted in **good faith**, with **due care**, and **within their authority**.

★★★★ 3) LIMITATION ON LIABILITY

A corporation's articles may reasonably limit the liability of officers and directors for bad judgment, but not for bad faith misconduct in, or relative to, the discharge of their duties.

★★★★ B. Duty of Loyalty

Directors and officers have a duty to avoid implicating her personal interests. Such interests may not conflict with the interests of the corporation. The classic breach of the duty of loyalty involves insider trading. Examination questions may involve **interested transactions**. The following rules, which may only refer to directors, generally also apply as a matter of principal to officers of a corporation.

1) INTERESTED TRANSACTIONS

a) Does a Conflicting Interest Exist?

Under the RMBCA, a director has a "conflicting interest" in a transaction if the director either is a "party to the transaction," or "has a beneficial financial interest in ... the transaction... of such financial significance to the director...that the interest would reasonably be expected to exert an influence on the director's judgment if...called upon to vote on the transaction..." RMBCA § 8.60(1)(i).

b) Required Disclosure Regarding Conflicting Interests

The board cannot vote to authorize a transaction unless the interested directors have made certain required disclosures to the entire board of directors. RMBCA § 8.62(a). The required disclosures include all "facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction." RMBCA § 8.60(4)(ii).

c) Authorization of Interested Transactions

If the interested directors make the required disclosure, the "qualified" (non-interested) members of a board of directors can ordinarily act to authorize a director's conflicting interest transaction. RMBCA § 8.62(a). A "qualified" director is a director who does not have a conflicting interest with respect to the transaction and does not have a familial or other relationship with a director that has a conflicting interest. RMBCA § 8.62(d). Such approval requires "the affirmative vote of a majority (**but no fewer than two**) of those qualified directors on the board of directors." RMBCA § 8.62(a). If only one director is "qualified," the board of directors cannot properly authorize the transaction. RMBCA § 8.62(a). Note that some states (including Delaware) require the vote of a majority of disinterested directors, but such majority may be only one director. If the transaction is authorized without compliance with these requirements, the action of the board may still be valid if the director can demonstrate that it was **fair** to the corporation.

2) USURPING CORPORATE OPPORTUNITIES

The **corporate opportunity doctrine** prohibits directors or officers from appropriating to themselves business opportunities that rightfully belong to the corporation. Whether a particular business opportunity belongs to the corporation or is personal to an individual depends upon the facts and circumstances of each particular case. Otherwise, the director may be liable for "disgorgement of profits."

C. **Majority Shareholder**

Majority shareholders may owe a fiduciary duty to minority shareholders including the duty to act in good faith and inherent fairness. This is especially applicable in close corporations where shareholders will be held to a higher standard that is akin to the standard for partners in a partnership.

D. **Members and Managers (LLC)**