

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

CALIFORNIA	
Duty of Care	Corporate directors owe a duty of care to the corporation and its shareholders and must serve in good faith in a manner such director believes to be in the best interest of the corporation and its shareholders. A court only is required to defer to the business judgment of decisions made by disinterested directors. <i>Tritek Telecom, Inc. v. Superior Court</i> , 87 Cal. Rptr. 3d 455 (Cal. Ct. App. 2009).
Business Judgment Rule	A director is not liable for a mistake in business judgment, absent conflict of interest, as long as it is made in good faith and is believed to be in the best interest of the corporation. However, a director cannot ‘abdicate’ the director’s responsibilities by ‘closing his eyes’ to what is going on around the director and then claim to be exercising business judgment. <i>Gaillard v. Natomas Co.</i> , 256 Cal. Rptr. 701 (Cal. Ct. App. 1989).
Duty of Loyalty	<p>Majority shareholders, either singly or acting in concert to perform a joint purpose, have a fiduciary duty to minority shareholders and to the corporation to use their power to control the corporation in a fair, just, and equitable manner. Directors, as well as majority shareholders in this situation, are fiduciaries whose powers are in trust. Their dealings with the corporation are subject to rigorous scrutiny and the burden is on the director or challenged shareholder to show decisions are made in good faith and there is inherent fairness in the transaction. <i>Jones v. A.H. Ahmanson & Co.</i>, 1 Cal. 3d 93 (Cal. 1969).</p> <p>If a decision is challenged on the basis of improper motive, it must be shown that the improper motive was the sole or primary reason that the decision was made. <i>Elridge v. Tymshare, Inc.</i>, 230 Cal Rptr. 815 (Cal. Ct. App. 1986).</p>
Breach of Fiduciary Duty	<p>As long as a director acts in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, that an ordinarily prudent person in a like situation would exercise, a director cannot be held personally liable. CAL. CORP. CODE § 309.</p> <p>In a corporation’s articles of incorporation, director personal liability can be limited or altogether eliminated unless the conduct falls within the following exceptions: not in good faith, acts or omissions director believes are not in the best interest of the corporation, when a director receives improper personal benefit, when there is a reckless disregard of the director’s duties to the corporation and the director knew or should have known that the act or omission could cause serious harm to the corporation or shareholders, or when there is an unexcused pattern of inattention by a director that amount to abdication of the duties owed by the director to shareholders. CAL. CORP. CODE § 204.</p> <p>A prima facie showing of good faith and reasonable investigation is shown when a majority of the board is comprised of outside directors and the board has received the advice of independent consultants. If this showing is made, without rebuttal, directors can rely on the business judgment rule as a defense to claims of ordinary negligence. <i>F.D.I.C. v. Casterter</i>, 184 F.3d 1040 (9th Cir. 1999).</p>

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

CALIFORNIA, Continued	
Duty of Candor	<p>A director with special knowledge pertaining to facts that would affect stock price must disclose the facts prior to a purchase or sale of ownership in the corporation. <i>Hobart v. Hobart Estate Co.</i>, 159 P.2d 958 (Cal. 1945).</p> <p>A director owes to the corporation the highest fiduciary obligation and the fullest duty of disclosure. <i>American Trust Co. v. California Western States Life Ins. Co.</i>, 98 P.2d 497 (Cal. 1940).</p>
Board Independence	
Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. CAL. CODE REGS. tit. 10 § 2309.14.
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

	DELAWARE
Duty of Care	Even where possible to hold directors responsible for a breach of the duty of care, Delaware law requires that the directors acted with gross negligence. <i>In Re Lear Cor. Shareholder Litigation</i> , 967 A.2d 640 (Del. Ch. 2008).
Business Judgment Rule	<p>Presumption that in making business decisions, directors of corporation act on informed basis and in good faith and in honest belief actions taken are best for company. Director liability under business judgment rule requires gross negligence. <i>Aronson v. Lewis</i>, 473 A2d 805 (Del. 1985) overruled on other grounds by <i>Brehm v. Eisner</i>, 746 A.2d 244 (Del. 2000).</p> <p>Unless shown by a preponderance of evidence that director’s decisions were primarily based on perpetuating themselves in office, or some other breach of fiduciary duty such as fraud, overreaching, lack of good faith, or being uninformed, a Court will not substitute its judgment for that of the board. <i>Unocal v. Corp. v. Mesa Petroleum Corp.</i>, 493 A.2d 946 (Del. 1985).</p>
Duty of Loyalty	<p>A company’s certificate of incorporation may waive personal liability of directors to stockholders for breach of fiduciary duty as a director. However, this cannot extend to a director’s duty of loyalty. DEL. CODE ANN. tit. 8 § 102(b)(7) (Corporations).</p> <p>Directors must display utmost good faith and most scrupulous inherent fairness of transactions in which they possess a financial, business, or other personal interest which does not devolve upon the corporation or shareholders generally. When faced with such divided loyalties, directors have the burden of establishing the entire fairness of the transaction to survive careful scrutiny by the courts. ‘Entire fairness’ has two components: fair dealing and fair price. <i>Mills Acquisition Co. v. McMillan, Inc.</i>, 559 A.2d 1261 (Del. 1988).</p> <p>Careful scrutiny of the entire fairness of the process is the test when interested directors participate in self-dealing or inter-holding company transactions. <i>Weinberger v. UOP, Inc.</i>, 457 A.2d 701 (Del. 1983).</p>
Duty of Candor	<p>Duty of candor applies to officers and directors as well as those who are privy to material information obtained in the course of representing corporate interests. Fiduciaries may not use superior information to materially mislead others in the performance of their fiduciary obligations. <i>Mills</i>, 559 A.2d 1251 (Del. 1988).</p> <p>Directors are under a fiduciary duty to disclose fully and fairly all material information within the board’s control when it seeks shareholder action. Directors who knowingly disseminate false information that results in corporate or stockholder injuries may be held accountable. Materiality in this context is defined as any information that a reasonable investor would view as altering significantly the ‘total mix’ of information made available. When not in a shareholder action context, the duty requires that if information is disclosed to investors, all information must be disclosed necessary to ensure that it is not misleading. <i>Malone v. Brincat</i>, 722 A.2d 5 (Del. 1998).</p> <p>Duty of disclosure is not an independent duty but is instead an application of the fiduciary duties of loyalty, good faith, and care. <i>Malpiede v. Townson</i>, 780 A.2d 1075 (Del. 2001).</p>

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

DELAWARE, Continued	
Breach of Fiduciary Duty	For liability, it must be shown by a preponderance of evidence that director's decisions were primarily based on perpetuating themselves in office, or some other breach of fiduciary duty such as fraud, overreaching, lack of good faith, or being uninformed. Otherwise the business judgment rule applies absent gross negligence. <i>Unocal</i> , 493 A.2d 946 (Del. 1985).
Board Independence Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. Del. Code Ann. tit. 18, § 301.
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

GEORGIA	
Duty of Care	The business judgment rule shields director and officer liability when they make good faith business decisions in an informed and deliberate manner. <i>Matter of Munford, Inc.</i> , 98 F.3d 604 (11th Cir. 1996).
Business Judgment Rule	Georgia's business judgment rule relieves officers and directors from liability for acts or omissions taken in good faith compliance with corporate duties. The rule forecloses liability on directors for ordinary negligence in discharging their duties. <i>Flexible Products Co. v. Ervast</i> , 643 S.E. 2d 560 (Ga. Ct. App. 2007). Directors may be liable in discharging their duties for bad faith, fraud, or abuse of discretion but allegations amounting to mere carelessness, negligence, or lackadaisical performance are insufficient as a matter of law. Business judgment rule gives presumption that directors acted on an informed basis, in good faith, and in an honest belief that the action was taken for the best interests of the company. <i>Brock Built, LLC v. Blake</i> , 686 S.E. 2d 425 (Ga. Ct. App. 2009).
Duty of Loyalty	Corporate officers and directors are in a fiduciary relationship to the corporation and its shareholders and are held to a standard of the utmost good faith and loyalty. <i>Insight Technology v. FreightCheck, LLC</i> , 633 S.E. 2d 373 (Ga. Ct. App. 2006).
Duty of Candor	While not a strict trustee, Georgia law holds directors are in a fiduciary relationship with shareholders and with this comes a duty to disclose pertinent and vital information. Due to the fiduciary relationship, the beneficiary may rely implicitly, not only on what is said, but also on the supposition that nothing important will be left unsaid by the officer. <i>General Information Processing Systems, Inc. v. Sweeney</i> , 335 S.E. 2d 722 (Ga. Ct. App. 1985).
Breach of Fiduciary Duty	Directors are required to discharge duties in a manner believed to be in good faith and in the best interests of the corporation and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. However, it must be more than ordinary negligence which is shielded by the business judgment rule. GA. CODE ANN. § 14-2-830 (Corporations).
Board Independence Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. GA. COMP. R. & REGS. 120-2-60-14.
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

ILLINOIS	
Duty of Care	Directors are required to exercise proper care, skill, and diligence and therefore a breach of this duty can be shown under a negligence standard. <i>Stamp v. Touche Ross and Co.</i> , 636 N.E. 2d 616 (Ill. App. Ct. 1993).
Business Judgment Rule	The business judgment rule shields directors who have been diligent and careful in performing their duties from liability for honest errors or mistakes in judgment. The requirements necessary for protection under this business judgment rule are due care, adequate information, and good faith in making the business decision. <i>Miller v. Thomas</i> , 656 N.E. 2d 89 (Ill. App. Ct. 1995).
Duty of Loyalty	A director cannot misappropriate corporate assets or take advantage of business opportunities which are considered as ‘belonging’ to the corporation. <i>Graham v. Mimms</i> , 444 N.E. 2d 549 (Ill. App. Ct. 1982). Where a board decision is not made by a majority of disinterested voting members the board member has the burden of establishing that the challenged transaction was fair and reasonable and that the corporation was paid full consideration and suffered no detriment nor was deprived of any proper benefits. <i>Shlensky v. South Parkway Building Corp.</i> , 166 N.E. 2d 793 (Ill. 1960).
Duty of Candor	Director with self-interest in a personal transaction that is an opportunity for the corporation must fully disclose all information to allow the corporation to make an informed decision as to whether to proceed in the challenged transaction in order to avoid breach of duty of loyalty to the corporation. <i>Lindenhurst Drugs Inc. v. Becker</i> , 506 N.E. 2d 645 (Ill. App. Ct. 1987).
Breach of Fiduciary Duty	Absent allegations of fraud, illegality, or gross overreaching, the courts are not at liberty to interfere with business judgments made by directors. However, this shield of the business judgment rule has the prerequisite that the director acted with due care in business decision-making. <i>Stamp</i> , 636 N.E.2d 616 (Ill. App. Ct. 1993).
Board Independence Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. ILL. ADMIN. CODE tit. 50, § 925.20.
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

IOWA	
Duty of Care	Each member of a board of directors must act in good faith and in a manner that the director reasonably believes is in the best interests of the corporation. Each member, when becoming informed in connection to a decision-making function or related to an oversight function, must discharge the member's duties with the care that a person in the same position would reasonably believe appropriate under the circumstances. An uninformed board member may reasonably rely on reports or other information from an individual reasonably believed to be reliable. IOWA CODE § 490.830 (Corporations).
Business Judgment Rule	When directors act in good faith in making a business decision, when the decision is reasonably prudent, and when the directors believe it to be in the corporate interest, there can be no liability. <i>Hanrahan v. Kruidenier</i> , 473 N.W. 2d 184 (Iowa 1991). Business judgment rule only operates where a director is shown not to have a self-interest in the transaction at issue. <i>Cookies Food Products</i> , 430 N.W. 2d 447 (Iowa 1988).
Duty of Loyalty	Where directors are involved with self-dealing, the burden rests on them to establish that the decision was fair to the corporation. <i>Hanrahan</i> , 473 N.W.2d 184 (Iowa 1991). Corporate directors and officers may under proper circumstances transact business with the corporation, but it must be done in the strictest of good faith and full disclosure is required. Such transactions are scanned by the courts with skepticism and the closest scrutiny and may be nullified on slight grounds. <i>Cookies Food Products</i> , 430 N.W. 2d 447 (Iowa 1988).
Duty of Candor	As fiduciaries, directors owe a duty to disclose information to those who have a right to know the facts. <i>Mitchellville Co-op v. Indian Creek Corp.</i> , 469 N.W. 2d 258 (Iowa 1991).
Breach of Fiduciary Duty	Director's fiduciary duty includes a duty of care and a duty of loyalty. <i>Cookies Food Products Inc.</i> , 430 N.W. 2d 447 (Iowa 1988). Director cannot escape the consequences of neglect of its fiduciary duty. Liability found where "even the most ordinary diligence on their part would have prevented the surrender of the corporation." <i>Rowen v. Le Mars Mut. Ins. Co. of Iowa</i> , 282 N.W. 2d 639 (Iowa 1979).
Board Independence Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. IOWA ADMIN. CODE r. 191-98.13(8)(505).
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

NEVADA	
Duty of Care	The duty of care consists of an obligation to act on an informed basis. The business judgment rule does not protect gross negligence from uninformed officers or directors. <i>Shoen v. SAC Holding Corp.</i> , 137 P.3d 1171 (Nev. 1971).
Business Judgment Rule	Directors are required to act in good faith and in furtherance of corporate best interests. Liability of directors is generally shielded unless there is found to be both breach of fiduciary duty and either intentional misconduct, fraud, or a knowing violation of the law. NEV. REV. STAT. § 78.138 (Corporations).
Duty of Loyalty	The duty of loyalty requires the board and its directors to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests. A violation will only be found where there is either intentional misconduct, fraud, or a knowing violation of the law. When fiduciary's interestedness is challenged, burden is on the fiduciary to show the transaction's entire fairness to the corporation. <i>Shoen</i> , 137 P.3d 1171 (Nev. 1971).
Duty of Candor	Corporate directors have a general duty to make independent, fully informed decisions when recommending a merger and to disclose material information to shareholders before a vote is taken. <i>Cohen v. Mirage Resorts</i> , 119 P.3d 1 (Nev. 2003).
Breach of Fiduciary Duty	Breach of duty of care requires gross negligence. Breach of duty of loyalty requires intentional misconduct, fraud, or a knowing violation of the law. Interestedness can be seen as intentional misconduct and the burden is on the challenged 'interested' fiduciary to show that there was entire fairness of the transaction to the corporation. <i>Shoen</i> , 137 P.3d 1171 (Nev. 1971).
Board Independence Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. LCB File No. R205-08 (adopted but not yet codified).
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

	NEW YORK
Duty of Care	New York has a long-standing rule that a director does not exempt himself from liability by failing to do more than passively rubber-stamp the decisions of the active managers. <i>Barr v. Wackman</i> , 329 N.E. 2d 180 (N.Y. 1975).
Business Judgment Rule	Directors' authorization of a particular corporate act, if made in their considered opinion that it is in the best interests of the corporation, and fair to the corporation, will not be interfered with by the courts. <i>Barr</i> , 329 N.E. 2d 180(N.Y. 1975). The business judgment doctrine bars judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes. <i>Auerbach v Bennett</i> , 393 N.E. 2d 994 (N.Y. 1979).
Duty of Loyalty	If a director usurps a corporate opportunity for the director's own benefit and purpose, the director is liable for a breach of the duty of loyalty. A director may not profit at the expense of the corporation and in conflict with its rights, and may not for personal gain divert unto oneself the opportunities which in equity and fairness belong to the corporation. <i>Manacher v. Central Coal Co.</i> , 63 N.Y.S. 2d 463 (N.Y. App. Div. 1946).
Duty of Candor	In business transaction, a party is ordinarily under a duty to disclose material facts if (1) there is a fiduciary relationship between the parties or (2) one party has superior knowledge that is not readily accessible to another and that party knows the other party is acting on the basis of mistaken knowledge. <i>Bank of New York v. Brahm Mfg. Corp.</i> , 803 N.Y.S. 2d 17 (N.Y. App. Div. 2005).
Breach of Fiduciary Duty	A court may look into the reasonableness of the procedures used to gather information and create the decision-making process, but may not go into the decision itself. <i>Auerbach</i> , 393 N.E. 2d 994 (N.Y. 1979). Mistakes in the exercise of honest business judgment do not subject the directors to liability for negligence in the discharge of their fiduciary duties. The standard is one of reasonable diligence, not the utmost amount of diligence. <i>Casey v. Woodruff</i> , 49 N.Y.S. 2d 625 (N.Y. 1944).
Board Independence Audit Committee	Audit committees for insurers with prior calendar year direct written and assumed premiums between \$300 million and \$500 million shall have a minimum of 50% of its members qualify as independent and for those with premiums greater than \$500 million shall have a minimum of 75% of its members qualify as independent. N.Y. COMP. CODES R. & REGS. tit. 11 §§ 89.12.
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

TEXAS	
Duty of Care	The duty of care requires a director to be diligent and prudent in managing a corporation's affairs. However, in Texas courts will not impose liability on non-interested directors unless the challenged action is tainted by fraud or beyond the corporation's powers. <i>Gearhart Industries, Inc. v. Smith Intern., Inc.</i> , 741 F.2d 707 (5th Cir. 1984); <i>Campbell v. Walker</i> , 2000 WL 19143 (Tex. App. 2000).
Business Judgment Rule	For a director to be liable, a shareholder must show that an action or inaction was governed by something beyond unsound business judgment. Merely showing that the challenged action was unwise, inexpedient, negligent, or imprudent is insufficient. <i>Pace v. Jordan</i> , 999 S.W. 2d 615 (Tex. App. 1999). A corporation's business decisions are not measured by objective standards. <i>Johnson ex rel. MAII Holdings, Inc. v. Jackson Walker L.L.P.</i> , 247 S.W. 3d 765 (Tex App. 2008).
Duty of Loyalty	The duty of loyalty dictates that a director must act in good faith and must not let the director's personal interests prevail over the interests of the corporation. Interested is defined as making a personal profit from a transaction with the corporation or usurps a corporate opportunity, buys or sells from the corporation, transacts corporate business with a family member, or transacts business in a director's capacity with a second corporation which the individual is also a director. <i>Gearhart</i> , 741 F.2d 707 (5th Cir. 1984).
Duty of Candor	The duty of loyalty requires an extreme level of candor, unselfishness, and good faith on behalf of the director towards the corporation. <i>Loy v. Harter</i> , 128 S.W. 3d 397 (Tex. App. 2004).
Breach of Fiduciary Duty	To sue for a breach of fiduciary duty the challenged actions or inactions must rise beyond negligence. <i>Pace v. Jordan</i> , 999 S.W. 2d 615 (Tex. App. 1999).
Board Independence Audit Committee	None
Other Committees	None

STATE LAW - CORPORATE GOVERNANCE OVERVIEW

	RHODE ISLAND – Review of Specific Corporate Governance Standards Enacted by R.I. R.I. Gen. Laws § 27-1-2.1
General Background	Enacted in 2007. Applies to domestic insurers “regardless of their size or ownership structure.” Insurer that does not comply must submit plan of corrective action subject to Commissioner approval. Does not supersede any specific statutory corporate governance standards otherwise applicable to domestic insurers. Exempts insurers that are, or are controlled by an entity that is, compliant with SOX §201 preapproval, §301 audit independence and §404 internal control over financial reporting.
Board of Directors	Number of members: minimum 5, maximum 21. Number of meetings per year: minimum 2, encourage 4. Must have written attendance policy. Must have authority to meet in executive session. Must review minutes of Audit Committee.
Audit Committee	Similar to Annual Financial Reporting Model Regulation requirements as to selection of independent auditor (Model §14A) and auditor’s reporting to Audit Committee (Model §14F). Number of meetings per year: minimum 2. Must have written charter.
Ethics	No domestic insurer or affiliate may extend personal loan to any director or officer. Must have written code of ethics covering directors and officers. Should have written whistleblower policy.
Additional Requirements for Larger Insurers	Additional requirements apply to domestic mutuals and insurers with more than \$100 million in annual premium writings. These entities are required to have a majority of independent board members, a majority of independent Audit Committee members and an Audit Committee that approves all related party transactions (materiality thresholds permitted if stated in Audit Committee charter).
Definition of Independence	Board and Audit Committee members shall be considered independent if they: <ul style="list-style-type: none"> ○ Are not receiving compensation from the insurer except reasonable compensation for services as director; ○ Have not received compensation from the insurer in past 12 months as employee or independent contractor, except as director; ○ Do not receive material financial benefits from the insurer; and ○ Are not related to or a domestic partner of one who is compensated by or received material financial benefits from the insurer.

Note: The Review of Corporate Governance Law in Rhode Island was restricted to a review of one specific statute adopted by Rhode Island into its insurance code in 2007. As such, the rows in the table above have been modified to reflect the most relevant information included in that particular statute.

These charts do not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Every effort has been made to provide correct and accurate summaries to assist the reader in targeting useful information. For further details, the statutes and regulations cited should be consulted. The NAIC attempts to provide current information; however, readers should consult state law for verification.