

381.9170 Discharge of board member's duties -- Standards for monetary damages and injunctive relief.

- (1) A board member shall discharge his or her duties as an officer or a member of the executive board, including his or her duties as a member of a committee:
 - (a) In good faith;
 - (b) On an informed basis; and
 - (c) In a manner he or she honestly believes to be in the best interests of the corporation.
- (2) Such board member shall be considered to discharge his or her duties on an informed basis if he or she makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the association, or into a particular action to be taken or decision to be made.
- (3) In discharging his or her duties, such board member shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 - (a) One (1) or more officers or employees of the association whom the board member honestly believes to be reliable and competent in the matters presented;
 - (b) Legal counsel, public accountants, or other persons as to matters the director honestly believes are within the person's professional or expert competence; or
 - (c) A committee of the executive board of which he or she is not a member if the board member honestly believes the committee merits confidence.
- (4) A board member of an association shall not be considered to act in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (3) of this section unwarranted.
- (5) In addition to any other limitation on such board member's liability for monetary damages contained in any provision of the association's articles of incorporation adopted in accordance with state law, any action taken as a board member, or any failure to take any action as a board member, shall not be the basis for monetary damages or injunctive relief unless:
 - (a) The board member has breached or failed to perform the duties of the board member's office in compliance with this section; and
 - (b) In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (6) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of subsection (5)(a) and (b) of this section, and the burden of proving that the breach or failure to perform was the legal cause of the damages suffered.

Effective: April 11, 2012

History: Created 2012 Ky. Acts ch. 99, sec. 11, effective April 11, 2012.