

**Judicial Deference: An overview**  
**Note this is a California case but explains the issue**  
**Supports (most) HOA Board Decisions**

Judicial Deference or "business judgment doctrine" is the principle where courts will defer to business decisions of a board even if a reasonable person would have acted differently.

A mistake of judgment on the part of a board of directors does not justify taking the control of corporate affairs from the board of directors and placing it with the stockholders. The board of directors may make incorrect decisions, as well as correct ones, so long as it is faithful to the corporation and uses its best business judgment. (Beehan v. Lido Isle.)

Burden of Proof. The burden of proof is on an objecting homeowner to show that an association's decision is arbitrary, imposes burdens on the use of lands it affects that substantially outweigh the restriction's benefits to the development's residents, or violates a fundamental public policy." (Nahrstedt, 8 Cal.4th at 361, 386; Cohen, 142 Cal.App.3d at 642, 651-654.) In this regard, "courts do not conduct a case-by-case analysis of the restrictions to determine the effect on an individual homeowner; [instead they] consider the reasonableness of the restrictions by looking at the goals and concerns of the entire development." (Dolan-King, 81 Cal.App.4th at 965, 975.)

Presumption Favors Decision. The business judgment rule "sets up a presumption that directors' decisions are based on sound business judgment. This presumption can be rebutted only by a factual showing of fraud, bad faith or gross overreaching." (Eldridge v. Tymshare, Inc. (1986) 186 Cal.App.3d 767, 776.)

[N]either a court nor minority shareholders can substitute their business judgment for that of a corporation where its board of directors has acted in good faith and with a view to the best interests of the corporation and all its shareholders. The power to manage the affairs of a corporation is vested in the board of directors.... Every presumption is in favor of the good faith of the directors. Interference with such discretion is not warranted in doubtful cases. (Beehan v. Lido Isle Community Assn (1977) 70 Cal.App.3d 858, 865.)

HOAs: The Business Judgment Rule protects boards but is not a free pass (Morning Call Newspaper)

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The Business Judgment Rule protects directors from personal liability if a homeowners association board errs. Courts repeatedly have given deference to decisions made within the Business Judgment Rule, but that deference is not unlimited.

**Termites and discretion**

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Courts normally defer to HOA boards as long as the Business Judgment Rule is followed. The State Supreme Court said so in 1999, while deciding Lambden v. La Jolla Shores. In the Lambden case, a homeowner contended the board should have responded to a termite problem with fumigation instead of spot treatment. The court held that as long as the board followed the rule, "courts should defer to the board's authority and presumed expertise."

Judicial deference is essential, enabling boards to govern their associations without being continually in litigation

whenever a neighbor disagrees. This includes the decision regarding whether to pursue enforcement litigation, confirmed in the 1977 *Beehan v. Lido Isle* decision. That appellate court ruling supported the board's Business Judgment Rule discretion to decide not to pursue an architectural rule violation deemed not worth the effort.

Associations also have reasonable discretion in the manner in which they deal with CC&R violations, under the 2007 ruling in *Haley v. Casa Del Rey*.

### **Discretion is NOT absolute**

The Business Judgment Rule is not a blank check justifying every association action. In each of the following cases, the board argued the court should be deferential in reviewing the board's decision, but the court found that the rule was not met — the board was wrong.

### **The law controls, not what the board Says**

In 2010's *Dover Village v. Jennison*, the board determined that a leaky sewer pipe under a condominium was "exclusive use", and thus was the member's repair responsibility. The HOA contended the court must, under *Lamden*, defer to its decision. However, the court disagreed, saying, "(t)here is an obvious difference between a legal issue over who precisely has the responsibility for a sewer line and how a board should go about making a repair that is clearly within its responsibility."

### **Boards may not Ignore CC&R's**

In 2002, a dispute arose in the *Marquesa at Monarch Beach HOA*. The CC&R's limited tree height, and the board invoked the Business Judgment Rule to exempt some palm trees. The appellate court in 2008 ruled: "The Board's interpretation of the CC&Rs was inconsistent with the plain meaning of the document and thus not entitled to judicial deference." So, boards cannot ignore the governing documents.

### **Boards cannot ignore law**

In *Ritter v. Churchill Condominiums*, the board argued the Business Judgment Rule protected its attempt to force a homeowner to repair a building code violation (a newly discovered hole in the common area floor structure separating levels of a high-rise tower). The higher court in 2008 disagreed, holding that the rule does not allow HOAs to ignore common area defects and building code violations.

### **Board inaction Is not discretion**

In 2011's *Affan v. Portofino Cove* case, a condominium owner had for six years suffered repeated sewage floods from the common plumbing. Each time, the HOA repaired the damage but never tried to determine and repair the cause. When *Affan* finally sued, the HOA argued the Business Judgment Rule protected it. The appellate court disagreed, noting that "the Association's inaction was not the result of any deliberative process."

### **Boundaries**

The Business Judgment Rule's protection is not unlimited. Boards cannot ignore the law, governing documents, or the problem. That discretion is unreasonable.