



Ohio Revised Code

Section 1745.33 Authority and duties of manager; standard of care.

Effective: May 22, 2012

Legislation: House Bill 267 - 129th General Assembly

(A) Except when the law or the governing principles require that action be otherwise authorized or taken, all of the authority of an unincorporated nonprofit association shall be exercised by or under the direction of its manager or managers.

(B) The only fiduciary duties a manager owes to the association are the duties set forth in this division. The duties of a manager are to act in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the unincorporated nonprofit association, and with the care that an ordinarily prudent person in a similar position would use under similar circumstances. A manager serving on a committee of managers is acting as a manager.

(C) In performing the duties of a manager, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by any of the following:

(1) One or more managers, officers, or employees of the association who the manager reasonably believes are reliable and competent in the matters prepared or presented;

(2) Counsel, public accountants, or other persons as to matters that the manager reasonably believes are within the person's professional or expert competence;

(3) A committee of the managers in which the manager does not serve, duly established in accordance with a provision of the governing principles as to matters within its designated authority, which committee the manager reasonably believes to merit confidence.

(D) For purposes of division (B) of this section, the following apply:

(1) A manager shall not be found to have failed to perform the manager's duties in accordance with that division, unless it is proved by clear and convincing evidence in an action brought against the



manager that the manager has not acted in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the unincorporated nonprofit association, or with the care that an ordinarily prudent person in a similar position would use under similar circumstances. An action under division (D)(1) of this section includes, but is not limited to, an action that involves or affects any of the following:

- (a) A change or potential change in control of the association;
- (b) A termination or potential termination of the manager's service to the association as manager;
- (c) The manager's service in any other position or relationship with the association.

(2) A manager shall not be considered to be acting in good faith if the manager has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by any of the persons described in divisions (C)(1) to (3) of this section, to be unwarranted.

(3) The provisions of division (D) of this section do not limit relief available under section 1745.42 of the Revised Code.

(E)(1) Subject to divisions (E)(2) and (3) of this section, a manager is liable in damages for any act that the manager takes or fails to take as manager only if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the manager was one undertaken with a deliberate intent to cause injury to the association or was one undertaken with a reckless disregard for the best interests of the association.

(2) Division (E)(1) of this section does not affect the liability of a manager under section 1745.56 of the Revised Code.

(3) Subject to division (E)(2) of this section, division (E)(1) of this section does not apply if, and only to the extent that, at the time of an act or omission of a manager that is the subject of the complaint, the governing principles of the association state by specific reference to division (E)(1) of this section that its provisions do not apply to the association.



(F) For purposes of this section, in determining what a manager reasonably believes to be in or not opposed to the best interests of the association, a manager shall consider the purposes of the association and may consider any of the following:

- (1) The interests of the employees, suppliers, creditors, and customers of the association;
- (2) The economy of this state and of the nation;
- (3) Community and societal considerations;
- (4) The long-term and short-term best interests of the association, including, but not limited to, the possibility that those interests may be best served by the continued independence of the association.

(G) Divisions (E) and (F) of this section do not affect the duties of a manager who acts in any capacity other than in the capacity as a manager.