

§ 717. Duty of directors and officers

(A)(a) Directors and officers shall discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. The factors set forth in subparagraph one of paragraph (e) of section 552 (Standard of conduct in managing and investing an institutional fund), if relevant, must be considered by a governing board delegating investment management of institutional funds pursuant to section 514 (Delegation of investment management)¹ For purposes of this paragraph, the term institutional fund is defined in section 551 (Definitions).

(b) In discharging their duties, directors and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by: (1) one or more officers or employees of the corporation, whom the director believes to be reliable and competent in the matters presented, (2) counsel, public accountants or other persons as to matters which the directors or officers believe to be within such person's professional or expert competence or (3) a committee of the board upon which they do not serve, duly designated in accordance with a provision of the certificate of incorporation or the bylaws, as to matters within its designated authority, which committee the directors or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in paragraph (a) of this section. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons who so perform their duties shall have no liability by reason of being or having been directors or officers of the corporation.

Credits

(L.1969, c. 1066, § 1. Amended L.1978, c. 690, § 8; L.1988, c. 734, § 1; L.2010, c. 490, § 7, eff. Sept. 17, 2010.)

§ 720. Actions against directors, officers and key employees

(a) An action may be brought against one or more directors, officers, or key employees of a corporation to procure a judgment for the following relief:

(1) To compel the defendant to account for his official conduct in the following cases:

(A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge.

(B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

(2) To set aside an unlawful conveyance, assignment or transfer of corporate assets, where the transferee knew of its unlawfulness.

(3) To enjoin a proposed unlawful conveyance, assignment or transfer of corporate assets, where there are reasonable grounds for belief that it will be made.

(b) An action may be brought for the relief provided in this section and in paragraph (a) of section 719 (Liabilities of directors in certain cases) by the attorney general, by the corporation, or, in the right of the corporation, by any of the following:

(1) A director or officer of the corporation.

(2) A receiver, trustee in bankruptcy, or judgment creditor thereof.

(3) Under section 623 (Members' derivative action brought in the right of the corporation to procure a judgment in its favor), by one or more of the members thereof.

(4) If the certificate of incorporation or the by-laws so provide, by any holder of a subvention certificate or any other contributor to the corporation of cash or property of the value of \$1,000 or more.

(c) In a corporation having no members, an action may be brought by a director against third parties to obtain a judgment in favor of the corporation. The complaint shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reason for not making such efforts. The court in its discretion shall determine whether it is in the interest of the corporation that the action be maintained, and if the action is successful in whole or in part, what reimbursement if any should be made out of the corporate treasury to the plaintiff for his reasonable expenses including attorney's fees, incurred in the prosecution of the action.

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(L.1969, c. 1066, § 1. Amended L.1971, c. 1058, § 25; L.2013, c. 549, § 78, eff. July 1, 2014.)