Constructive Disagreements
Taken from "Tales from the Boardroom," in the Spring 2012 issue of BoardLink

Tales from the Boardroom case studies are fictional examples created by the editor to illustrate common governance challenges.

Our scenario:
The Metro Bar Association has been deliberating whether or not to enter into a partnership with a local social services organization on a community service effort. The organizations have worked out the funding model and other details, and the board votes to proceed with the partnership. Three board members oppose the move. In his frustration, one of the board members opposed to the partnership posts a negative comment about the decision on the bar’s Facebook page.

What’s the problem?
It would be a problem if there were not disagreement on the board. Different perspectives bring valuable insight and, hopefully, result in better decisions. However, board members are expected to manage that disagreement. Board members are bound by their Duty of Loyalty to always act in the best interest of the organization. It is the rare circumstance that public criticism could be construed as acting in the organization’s best interest. (Knowledge of illegal activity taking place either by or on behalf of the organization is one situation that may require disclosure outside the organization, but board members should consult personal counsel before taking action.)

If you find yourself strongly disagreeing with a decision the board is making, here are a few strategies that make a forceful point but still allow you to uphold your fiduciary responsibility:

1. Set a time in advance of the board meeting to speak with the president and/or executive director and brief them on your concerns.
2. If you are concerned about a decision being made with insufficient information, consider if there is an outside expert who could enlighten the discussion. Then, talk with the president and executive director about arranging for that expert to contribute to the discussion.
3. If the vote has arrived and you know it is unlikely to go your way, write a letter explaining your opposition. Ask that it be read during the board meeting and entered into the minutes.
4. At a minimum, ask the secretary to ensure that the minutes reflect how you voted on the issue.
5. Once a vote is final, board members are expected to move forward and work within the new parameters. If you find that is not possible, consider submitting a letter of resignation from the board with an explanation of your reasons.

More information about fiduciary responsibility can be found on the Division for Bar Services’ Governance Resource Page.