
FOR BANK BOARD MEMBERS ONLY: HOW WELL PROTECTED ARE YOU?

Three key items for your "CYA" do-list

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I recently had the opportunity to participate in an ABA Banking Journal webinar on protecting directors and officers of community banks. I was honored to be a participant along with a state trade association executive, a former chairman of a large community bank, and a D&O insurance specialist from one of the large insurance companies. The perspectives each brought to the table were interesting.

Three key lessons for board members

From my standpoint, as someone who in a former life sued bank directors for the FDIC when their banks failed, and also in a former life served on a Board of Directors of a community bank, I tried to home in on three basic issues board members need to focus on.

The first is to make sure that you do your job.

That sounds really simple, but there are many community bank directors that I am convinced still do not have the foggiest idea of what their real job is.

Fortunately, there are a number of publications available to inform the directors of the material aspects of their job as a director or senior officer of a community bank. Many of these publications are produced by the federal bank regulatory agencies, the bank trade associations, and by private parties. There is no excuse for not understanding your job as a bank director, as well as the lexicon of community banking.

The second focus of my discussion was that directors and officers need to review the bank and holding company's Articles of Incorporation and Bylaws.

They must make sure, first, that they have the broadest indemnification provisions permitted by law. In addition, they should determine if they contain, if permitted by state law (for the holding company), limitation of liability provisions or standard of care provisions.

These provisions often indicate, for example, that a director will not be held liable unless he or she is reckless, or something similar. Keep in mind, the federal standard of care is "gross negligence," which is somewhere between negligence and recklessness.

The third issue I focused on is to make sure you understand your directors' and officers' insurance coverage.

The policies are not standard. They all vary. Make sure you understand what is excluded from coverage and what is included. Ask:

Does your policy have a regulatory exclusion?

Does it cover civil money penalties?

Does it cover post-bank failure situations?

Know what is covered.

Other views on director protection

The other webinar participants each had a different, yet interesting, perspective.

The former chairman of the large community bank focused on the board's job in reviewing information, having appropriate board minutes, receiving reports of officers, and assessing insurance coverage needs.

The trade association executive focused heavily on the need for continuing education for directors and officers.

Action item: Does your bank have a continuing education requirement for the directors and officers to make sure they understand the industry, or at least parts of it?

The insurance executive focused on negotiating the best D&O coverage you can get for the least price. Again, policies are not standard, so be alert and be aware.

Directors' and officers' liability is never a pleasant topic. Having served on the board of a community bank, however, I am fully convinced that the "risk is manageable."

About the Author

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