

DIRECTOR LIABILITY – PROTECTING YOUR BANK'S BOARD

**Bank Director Workshop
NACD and AABD
Fort Lauderdale, Florida**

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I. Introduction

- A. Bank failures are in the news, almost a weekly occurrence
 - B. Bank D&O insurance policies are being cancelled with great frequency and there is evidence of tightening of language and coverage
 - C. Cease and Desist Orders are proliferating
 - D. Bank examination reports are becoming highly critical of the Boards of Directors and management
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I. Introduction (cont'd)

- E. Disgruntled shareholders are becoming more aggressive and some are suing
 - F. The tailspin in the economy may not be over, and there is no clear end in sight to the deterioration of banks' financial condition
 - G. This is an environment in which potential liability of bank directors is heightened
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II. What we will cover

- A. Standard of care of bank directors in Florida and elsewhere
 - B. Sources of liability – private vs. governmental
 - C. Steps to avoid or mitigate the risk of personal liability
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III. Standard of care for bank directors and conflicts of interest

- A. Good faith
 - B. Care that an ordinarily prudent person in a like position would exercise under similar circumstances
 - C. In a manner he or she reasonably believes to be in the best interests of the corporation
 - D. Entitled to rely reasonably on others
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III. Standard of care for bank directors and conflicts of interest (cont'd)

E. Business Judgment rule

F. Statutory limitations on liability of directors

G. Conflicts of interest

H. Disney case and other case law affecting how courts review suits against directors

IV. Sources of liability

- A. Shareholders and other private parties
 - B. Government suits
 - C. Federal and state banking agencies
 - D. The Big Enchilada – when a bank fails
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V. Steps to avoid or mitigate personal liability

- A. Avoidance of a bank failure
 - B. Limitation of liability in statute, charter and/or bylaws
 - C. Indemnification provisions in statute, charter and/or bylaws
 - D. D&O Insurance
 - E. Avoidance of conflicts of interest
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V. Steps to avoid or mitigate personal liability (cont'd)

- F. Sufficient board reports and information flow
 - G. Identification of and resolution of red flags
 - H. Documentation
 - I. Creating a suitable corporate governance structure – information, knowledge, structural, and attitudinal needs
 - J. Resignation
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VI. "Before I refuse to take your questions, I have an opening statement"

Ronald Reagan
