



2025 Annual Conference & Directors Forum May 15, 2025

Directors Boot Camp – Session Two

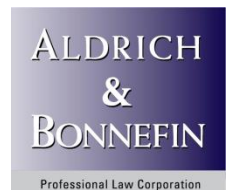
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Carrying Out Fiduciary Duties as Directors and How to Protect Yourself



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“Bank Director, Protect Thyself”

- Obtain information, opinions, reports or statements prepared by
 - Officers or employees believed to be reliable and competent
 - Counsel, independent accountants and others believed to be within such person’s professional or expert competence
 - Committee of the board as to matters within its designated authority
- All in good faith, after reasonable inquiry and without knowledge that such reliance is unwarranted



“Bank Director, Protect Thyself”

- Review D&O Insurance Policies
 - Regulatory exclusions may be imposed
 - Some insurers have challenged coverage based on the “insured vs. insured” exclusion even if regulatory coverage included
- Obtain Extended Coverage if Possible
 - Extended Discovery Period
 - “Tail Coverage”



“Bank Director, Protect Thyself”

- No coverage for fines or penalties (e.g., civil money penalties) if bank pays for policy – consider personal policy
- But advances are allowed for defense costs if the appropriate standard is met



“Bank Director, Protect Thyself”

- Obtain Indemnification Agreements from Bank
- Consider Access to Bank Information
 - FDIC warning directors not to remove internal documents as a breach of fiduciary duty
 - See FIL-14-2012 issued March 19, 2012



BOARD PROCESSES & MANAGEMENT RELATIONS



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Board Meetings

- Board Packets
- Meeting Agenda
- Consent Calendar



Board Meetings

- Board Reports
 - Financial Statements
 - Key Ratios
 - Expense/Budget
 - Overdrafts
 - Loan Activity



Board Meetings (cont'd)

- Board Reports (cont'd)
 - Investment Activity
 - Insider Transactions
 - Audit Reports
 - Compliance Reports



Board Committees

- Audit/Risk Management Committee
- Nominating Committee
- Compensation Committee
- Loan Committee
- ALCO Committee
- Executive/Governance Committee
- Risk Committee
- Other Committees
- Independence Issues



Board Processes

- How are committees formed?
- Should committee members rotate?
- How can committees function most effectively?



BOARD/MANAGEMENT RELATIONS

Guidance from the Office of the
Comptroller of the Currency



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Board's Role

- Board's Role
 - Establish a Clear Direction
 - Select Good People to Follow
 - Actively Oversee
 - Challenge, ask questions, hold management accountable
 - Measure performance against expectations
 - Let managers go who don't measure up



Establish A Clear Direction

- Develop and Approve a Strategic Plan
- Establish Specific, Measurable Goals
- Set Risk Tolerances
- Provide a Framework for Policies
- Communication



People

- Select Competent Management
- Open Communication
- Hold Management Accountable
- Dispense with Officers Who Prove Unable to Meet Expectations



Oversight

- Board Receives Appropriate Management Information
- Measure, Test and Verify: Audit
- Adjust as Needed



Management's Role

- Primary Role: Implement Board's Strategy, Risk Tolerances and Policies
 - Keep Directors Fully Informed
 - Day-to-Day Operations and Staff
 - Policy Exception Tracking
 - Management Information Systems



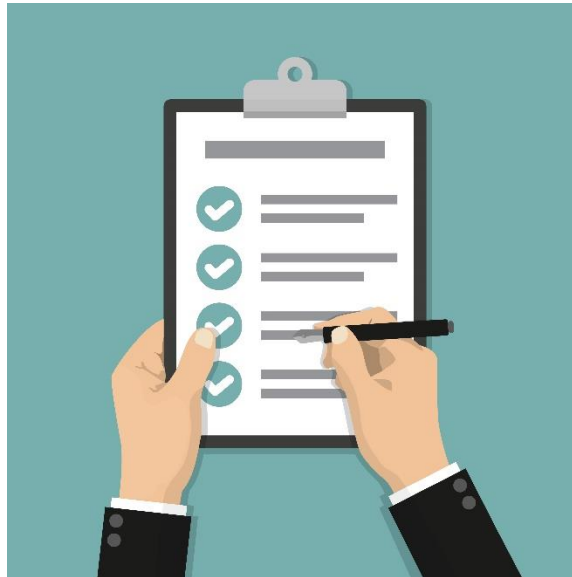
Board and Management

- Line in the Sand
 - NIFO – “Nose In Fingers Out”
 - Board of Directors Leads
 - Managers Manage
 - Open and Honest Communication



Regulatory Checklist:

Actions Requiring Annual
Review by Board of Directors



Board Processes

- How can you keep current on these issues?
- When are these policies most important?
- Which are the most critical policies today?
- When to review the various policies?



Regulatory Reviews

ACTIVITY	NATIONAL BANKS	STATE MEMBER BANKS	STATE NONMEMBER BANKS	SAVINGS ASSN'S
ACTIONS REQUIRING ANNUAL REVIEW				
Bank-owned Life Insurance (Annual review of insurance asset's performance)	X	X	X	X
Bank Secrecy Act and Anti- money Laundering Program (recommended)	X	X	X	X
Bank Security Procedures	X	X	X	X
Community Reinvestment Act (recommended)	X	X	X	X
Daylight Overdrafts (every six months recommended)	X	X	X	X
Disaster Recovery/Business Continuity	X	X	X	X
Annual Organizational Board Meeting	X	X	X	X
Insider Lending (required for federal credit unions, national banks and savings associations, recommended for the rest)	X	X	X	X



Regulatory Reviews

ACTIVITY	NATIONAL BANKS	STATE MEMBER BANKS	STATE NONMEMBER BANKS	SAVINGS ASSN'S
ACTIONS REQUIRING ANNUAL REVIEW				
Real Estate Lending Policy	X	X	X	X
Interbank Liabilities	X	X	X	X
Interest Rate Risk Policy	X	X	X	X
Annual Independent Audits and Reporting Requirements (Institutions having total assets of \$500 million or more at the beginning of their fiscal year)	X	X	X	X
Privacy Policy	X	X	X	X
Identity Theft Prevention Program (Red Flag Regulations) (recommended)	X	X	X	X
Fair Lending Policy	X	X	X	X
SAFE Act (Annual independent testing for compliance)	X	X	X	X



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Regulatory Reviews

ACTIVITY	NATIONAL BANKS	STATE MEMBER BANKS	STATE NONMEMBER BANKS	SAVINGS ASSN'S
ACTIONS REQUIRING ANNUAL REVIEW				
Affiliate Transaction Policy	X	X	X	X
Lending Policy	X	X	X	X
Allowance for Loan and Lease Losses (or Adjusted Allowance for Credit Losses under CECL)	X	X	X	X
Financial Derivatives Activities	X	X	X	X
Community Reinvestment Act (Qualified Investments) (recommended)	X	X	X	X



Regulatory Reviews

ACTIVITY	NATIONAL BANKS	STATE MEMBER BANKS	STATE NONMEMBER BANKS	SAVINGS ASSN'S
ACTIONS TO BE REVIEWED AS NEEDED				
Appraisal Policy	X	X	X	X
Investment Policy	X	X	X	X
Sale of Mutual Funds, Annuities, and Other Nondeposit Investments	X	X	X	X
Interagency Guidelines Establishing Standards for Safety and Soundness	X	X	X	X
Merchant Banking Activities	X	X	X	X
Security Program for Safeguarding Customer Information	X	X	X	X
Branch Closing Policy	X	X	X	X
Mortgage Servicing Policy for Military Homeowners with Permanent Change of Station Orders	X	X	X	X
Servicemembers Civil Relief Act and Military Lending Act	X	X	X	X
Remittance Transfer Error Resolution Compliance and Recordkeeping Policy (if applicable)	X	X	X	X



Succession Planning



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FRB's Community Banking Connections (2nd Issue 2021)

- Included an article on management succession planning
 - Principles can also apply to director succession planning
- States: “*Banking industry regulators consider proactive succession planning and management a key governance tool in promoting a bank’s resilience in difficult times*”



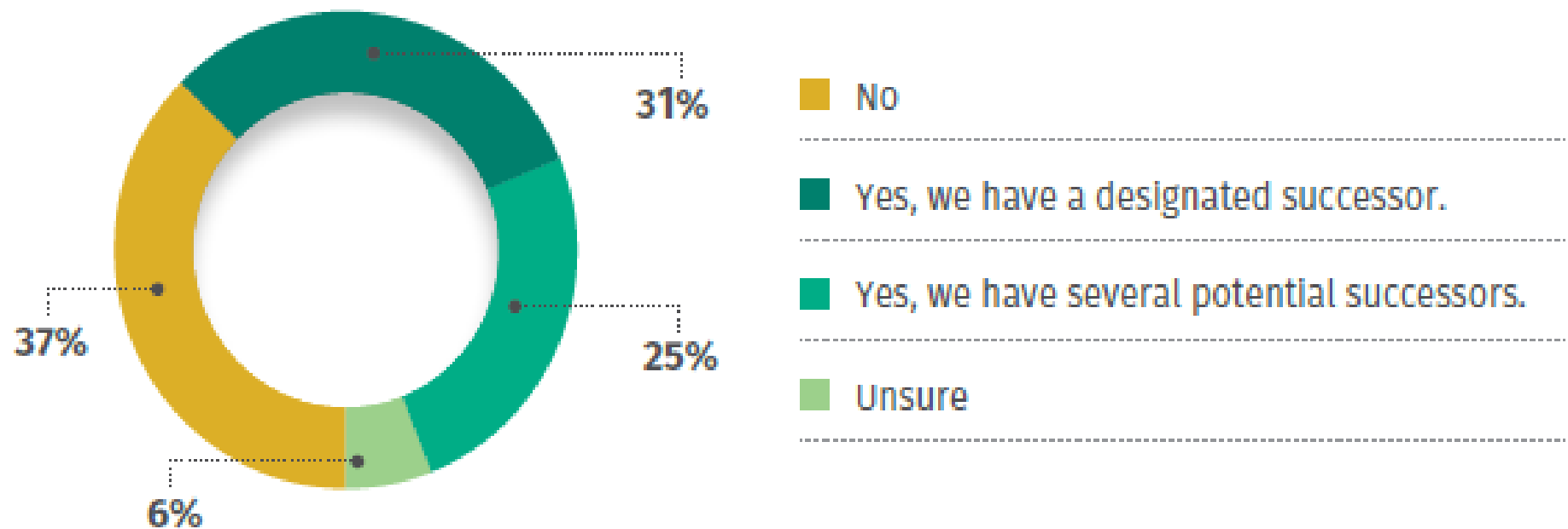
FRB's Community Banking Connections (2nd Issue 2021)

- When management succession plans are neglected, organizations are often unprepared for the loss of key employees
- A management succession plan should be developed, maintained and endorsed by the bank's board of directors and senior management



Identified Successors?

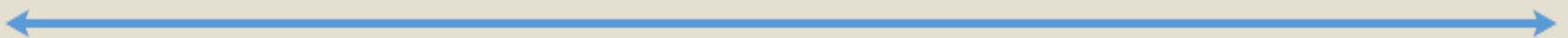
Figure 1: Banks with Identified Successors for CEO



Succession Planning Process

Figure 2: Succession Planning Process

Identify	Document	Transition	Develop	Assess
Short-/Long-Term Critical Roles	Key Competencies	Transition Successors	Develop Successors	Evaluate Effectiveness
Successors and Skill Sets		Transfer Knowledge		Measure Performance



Questions?





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We're adjourned!

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