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**WBA BANK EXECUTIVES CONFERENCE
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**Unpredictable Times Bring Unpredictable Legal Risks
(My Top 10 Legal Concerns for Wisconsin Bankers)**

Introduction.

LEGAL CONCERN NO. 1—Increase in Lender Liability Cases May Be Just Around Corner.

1. Past experience and current reported cases suggest lender liability cases likely to increase in 2009.
2. What's involved?
3. Some suggested best practices.
 - Do not make oral promises you may not keep.
 - Put it in writing.
 - Never misrepresent facts.
 - Never disclose information obtained in confidence.
 - Do not assume decision-making authority for borrower's business.
 - Avoid sudden and abrupt changes without notice.
 - Do not threaten to take action you do not intend to carry out.
 - Do not impose unreasonable time restrictions.
 - Be professional. Avoid personality conflicts. Be objective and factual in written reports.
 - Be careful about use of casual e-mails, and put important communications in writing.
 - Avoid creating course of dealing which would permit borrower to argue it reasonably expected lender consent to delays, defaults and breaches.
 - Before engaging in workout discussions, obtain written pre-negotiation agreement from borrower.
 - Others
4. Review and revise bank's best practices and educate lenders to deal with current lender liability concerns.

LEGAL CONCERN NO. 2—Increasing Regulatory Enforcement Actions Against Banks And Individuals.

1. The background.
2. Informal enforcement actions appear to be on increase.
3. Past experience, trend lines and current regulatory environment suggest more formal and informal enforcement actions in 2009.
4. Suggested actions to minimize risks for your bank.

LEGAL CONCERN NO. 3—Current Economic Times Affecting Relationships and Legal Risks Between Banks and Third Parties.

1. Increasing disputes regarding participation loans.
2. Increasing disputes with third party service providers.
3. Others.
4. Suggest banks review relationships and contracts and be informed and prepared regarding performance and obligations under contracts.

LEGAL CONCERN NO. 4—Changes in Political Climate May Carry Increased Legal Risks.

1. How will banks be viewed as courts and juries sort out liabilities and responsibilities?
2. How will banks be viewed as Legislature and Congress deal with multiple issues?
3. Likely new laws and regulations will carry added legal risks for banks.
4. Others.

LEGAL CONCERN NO. 5—More Banking Laws and Regulations.

1. Credit card rules and practices.
2. Mortgage disclosures.
3. Mortgage loan modifications.
4. Mortgage loan moratoriums.
5. Mortgage loan cramdowns.

6. Privacy and information technology management, including remote banking, remote deposit capture, red flag requirements, outsourcing of technology and others.
7. Others.
8. Regulatory relief is not on the list.

LEGAL CONCERN NO. 6—Likely Increase In Employment Related Legal Issues.

1. Handle reductions in workforce and other terminations carefully.
2. Several important legal considerations in selecting who to terminate and paying severance with releases.
3. Others.
4. Banks with 50 or more employees subject to Federal Family and Medical Leave Acts. U.S. Department of Labor issued new FMLA rules effective January 16, 2009.

LEGAL CONCERN NO 7—Legal Risks For Banks Participating in TARP.

1. Governmental and political expectations to lend more and document the lending.
2. Inconsistent expectations between Washington and regulatory field forces regarding additional lending.
3. Increasing restrictions on executive compensation.
4. Contractual provisions giving unusually broad authority to Treasury.
5. Difficult management decisions for banks carry legal, political and business risks.
6. There will be changes.
7. Others.
8. **Sub S banks must apply by February 13, 2009.**

LEGAL CONCERN NO. 8—Legal Pitfalls for Buyers and Sellers in Mergers and Acquisitions.

1. Is there a current bank merger and acquisition environment?
2. Importance of due diligence.

3. Material adverse change clauses in merger and acquisition agreements used to terminate or renegotiate.
4. Inclusion of "financial outs".
5. Others.

LEGAL CONCERN NO. 9—Legal Risks Incurred in Management and Ownership of Other Real Estate Owned.

1. Restrictive time periods for property ownership by banks.
2. Liability and other issues as owner.
3. Formation of subsidiaries to assume ownership of properties.
4. Corporate substance and other issues.
5. Others.

LEGAL CONCERN NO. 10—REGULATORY HOT BUTTONS FOR BANKS.

1. Earnings, liquidity, capital levels and asset quality—front burner.
2. Oversight by board of directors.
3. Commercial loans and prudent lending.
4. Contingency planning.
5. Compliance.
6. Others

Conclusion.

My one overriding suggestion is that banks engage in a self-assessment of legal risks in this unprecedented environment and take steps to address those risks.