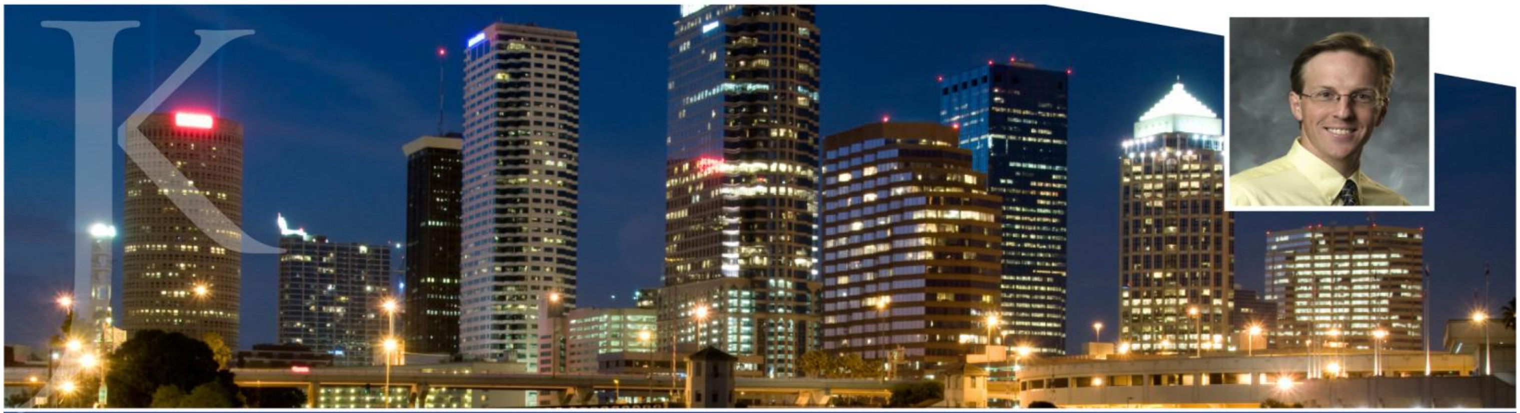

Directors Beware!

Have you ever been approached by one of your friends who recently formed a corporation and asks for you to serve on his board of directors? It sure sounds like a good idea to serve on someone's board, after all you will meet periodically, get a few free dinners and perhaps be paid a fee for some modest work. The Florida law has well established fiduciary duties that must be honored by a board of directors serving on behalf of the corporation and its shareholders. These basic duties include acting in good faith, exercising care and loyalty in the board's actions. With all of that in mind, every director must work for the benefit of all the shareholders, even if nominated or designated by a group of shareholders.

Traditionally, boards performed decision-making functions, such as evaluating and approving significant business transactions. Beyond that traditional role of decision-making, directors are often asked to serve in an oversight function. This oversight might include actively monitoring corporate performance and determining whether the company is performing in accordance with current law and corporate policy.

Assuming directors are acting within these standards, they should have no cause for concern. In addition, directors are protected against lawsuits for personal liability by the "business judgment rule." This rule is a judicially created presumption that decisions are appropriate if made by disinterested directors based on a good faith belief that the decisions will serve the corporation's best interests. If a plaintiff in a lawsuit cannot overcome that presumption, usually by showing the conflict of interest or bad faith, this rule prohibits a Court from going further and extending liability to a director personally for lawsuits filed against the corporation.

With that being said, the legal requirements and the expectations for directors have been expanded over the past years. More attention is now being focused on a corporation's performance and reporting systems to insure ethical behavior, reliable financial reporting and compliance with law and corporate policy. We can thank Enron and similar cases for these increased requirements. Because a director must be actively engaged in the supervision of the company, sitting on a board, enjoying a few free dinners and getting a stipend for essentially no work appears to be a thing of the past. If you are asked to serve on a board, think twice about accepting, unless you are willing to put in the time necessary to properly exercise your duties to the corporation and shareholders.

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