

Legal issues for the bank executive, director and attorney



37<sup>th</sup>  
Annual

# TBA Legal Conference

MARCH 31-APRIL 1, 2011

BARTON CREEK RESORT AND SPA • AUSTIN, TEXAS



TexasBankersAssociation

*One Industry. One Vision. One Voice.*

## Who should attend

We encourage managing officers, department heads, members of your board, all attorneys practicing law related to financial institutions and anyone responsible for the legal matters and regulations affecting your financial institution.

## Legal accreditation

The 37th Annual Legal Conference is currently in the approval process for credit from the Minimum Continuing Legal Education program, the Texas Board of Legal Specialization and the College of the State Bar. The conference has been accredited for the past twenty-two years. Number of hours submitted for accreditation: 15.0 hours including one and one-half hours (1.5) of ethics.

## CPE credit

We have entered into an agreement with the Texas State Board of Public Accountancy to meet the requirements of attendance records, retention of program outlines, qualifications of instructors, program content, physical facilities, and length of class hours. This agreement does not constitute an endorsement by the Board as to the quality of the program or its contribution to the professional competence of the licensee.

## Manual

A comprehensive Conference Manual, as well as a flash drive loaded with materials received prior to the conference, are included in the conference fee. This supplemental material, provided by the speakers, is an invaluable source of additional information for those who attend.

## Sponsors

Cox Smith Matthews  
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# 37<sup>th</sup> Annual TBA Legal Conference



The 37th Annual TBA Legal Conference for bank executives and attorneys will be held March 31-April 1, 2011, at Barton Creek Resort and Spa in Austin, Texas.

### The Challenges of Texas Banking in the Second Decade of the Twenty-First Century:

This year's conference will address the challenges in banking today. Presentations will cover conducting standard banking activities in an ever-changing environment; dealing with challenges from all sides - loan workouts, thinning revenue streams, volatile accounting proposals, arbitration debate and pressures for increased capital levels; exploring possible action plans: raising capital, switching charters, revising policies and considering the possibility of a sale; and maneuvering through the jungle of demanding bank regulators, bank failures and director and officer liability when things go wrong.

## Cost

Early registration discount for TBA/TABC members (if registration fee is received at TBA office by March 8, 2011) is \$525 per attendee. After March 8, 2011, the member registration amount is \$625 per attendee. The price includes the comprehensive Conference Manual and flash drive, the Thursday and Friday breakfast and lunch buffets, refreshment breaks and the Thursday evening reception.

## Hotel

The Barton Creek Resort & Spa is the location for the 37th Annual Legal Conference. Framed within 4,000 secluded acres of rolling hills just outside of Austin, the resort features the full-service Three Springs Spa, four spectacular championship golf courses, four extraordinary dining options, numerous recreational activities as well as award-winning conference and meeting facilities.

For more information and directions go to: [www.bartoncreek.com](http://www.bartoncreek.com).

The Conference rate for the hotel is \$169 single or double occupancy (plus an Automatic Daily Resort charge of 9% and applicable taxes). For reservations, call the Barton Creek Resort & Spa at 800/336-6158.

**Be sure to mention the Group Name – TBA Annual Legal Conference – when making your reservation.** Space is limited, so be sure to make your reservations ASAP!

**The prearranged room block expires March 8, 2011.** After March 8, call Barton Creek Resort & Spa to determine room availability and rate.



## Cancellation Policy

A full refund of registration fee will be made if written notice of cancellation is received in the TBA office by March 17th. Cancellations received between March 18 and March 25 will be charged a cancellation fee of \$300 per delegate and a manual will be shipped after the conference. **No refunds are available after March 25; however, substitutions are accepted by e-mail or fax.** Contact Jocelyn Carby at 512/472-8388 or [jocelyn@texasbankers.com](mailto:jocelyn@texasbankers.com).

# Program

Thursday, March 31, 2011

7:00 a.m.

**Registration  
Breakfast Buffet**

*Conference Manual Sponsored by: Hughes Watters Askanase, LLP  
Conference Flash Drive Sponsored by: Cox Smith Matthews Incorporated  
Conference Tote Bags Sponsored by: Jackson Walker L.L.P.*

8:00 a.m.

**General Session and Opening Remarks**

Cary Plotkin Kavy, Program Chair, Legal Conference  
Cox Smith Matthews Inc., San Antonio

8:15 a.m.

**Paying for the Sins of Others: Community  
Banks Suffer Under Dodd-Frank**

John M. Heasley, Texas Bankers Association, Austin  
*An overview of the major titles of last year's financial reform legislation, the Dodd-Frank Act. Although intended to end the notion of "Too Big to Fail" banks, the act gives large entities more opportunities to avoid failure. For smaller banks, the bill limits fee income and greatly increases regulatory compliance costs.*

8:45 a.m.

**The Continuing World of Mortgage Regulation**

John Fleming, Hays & Owens L.L.P., Austin  
Caroline C. Jones, Texas Department of Savings and Mortgage Lending, Austin  
Marsha Williams, Middleberg Riddle & Gianna, Dallas  
Karen Neeley, Cox Smith Matthews Inc., Austin (moderator)  
*The 2010 Conference discussed "The (Ever) New World of Mortgage Regulation." The World of Mortgage Regulation is continuing and expanding. RESPA and TILA regulatory changes continue, and Dodd-Frank has amended those two laws significantly. Dodd-Frank also introduced new concepts and limitations to mortgage banking operations. Many changes will not be fully known until the regulations are issued. Loan originator licensing and registration requirements directly affect not only the loan originators, but their employers and their operations as well.*

10:00 a.m.

**Refreshment Break**

10:15 a.m.

**Fraud Issues in ACH Transactions**

Erin Fonte, Cox Smith Matthews Inc., Austin  
*ACH fraud is growing and fraudsters target customer-side computer security. Attacks are sophisticated and successfully defeat even strong security mechanisms and multi-factor authentication steps. Learn about common forms of ACH fraud and attack, liability under the UCC (and recent case law), precautions your FI can employ, and steps to educate business customers so they can reduce their vulnerability to attacks.*

10:45 a.m.

**What to Expect in Your Next Exam**

Sanford Brown, Bracewell & Giuliani LLP, Dallas  
*Bank examinations are not getting any easier. This session will focus on current trends in the bank supervisory process.*

11:45 a.m.

**Executive Compensation: A Practical Approach to  
Resolving Hot Issues**

Anthony Eppert, Winstead PC, Houston  
*The rules surrounding executive compensation are constantly changing, especially for banking institutions. The purpose of this presentation is to highlight "hot" executive compensation issues, discuss the applicable legislative/regulatory rules and investor perceptions, and propose practical solutions that are intended to both incentivize and retain key executives of banking institutions.*

12:15 p.m.

**Lunch**

*Sponsored by: Sandler O'Neill + Partners, L.P.*

1:15 p.m.

**Afternoon General Session**

**Real Estate Workouts in a "No" Environment: Just Pay Me and Let's Get this Over With**

Wayne Kitchens, Hughes Watters Askanase, LLP, Houston  
*How do bankers and their counsel negotiate a workout in tough economic times when lending institutions either can't or won't lend more funds, and borrowers either can't or won't inject new capital.*

1:45 p.m.

**Note Sales, Short Sales and Bifurcations - Pursuing  
Alternatives to Extend and Pretend**

Steven Harker, Sterling Bank, Houston  
*The objective in a workout should be to seek a resolution that is more than "3 yards and a cloud of dust." Why exploring multiple alternatives may yield the "win/win" scenario that culminates in a true resolution and how bank counsel is integral to the process.*

2:15 p.m.

**Thinning Revenue Streams**

Karen Neeley, Cox Smith Matthews Inc., Austin  
*Recently, banks have relied on fees to bolster their income. With changes resulting from the Dodd-Frank Act and restrictions on overdraft programs, such fee income will be reduced – perhaps drastically. This segment will discuss the underlying regulatory framework for these changes, identify areas where fee income could be increased and discuss possible alternative sources of revenue.*

3:00 p.m.

**Refreshment Break**

3:15 p.m.

**Tidal Wave of Accounting Changes**

Rusty Thompson, Comptroller of the Currency, Dallas  
*This presentation will discuss the potential effect of the numerous proposed accounting changes including: international convergence, mark to market on all financial instruments, measuring impairment on loans, clarification on troubled debt restructurings, bringing all leases on balance sheet, and disclosures of loss contingencies.*

4:00 p.m.

**An Update On Bank Equities**

Brad Milsaps, Sandler O'Neill + Partners, L.P., Atlanta, GA  
*This presentation will provide an in-depth look at the current state of the banking industry. Potential topics of discussion include past and future performance of bank and thrift equities, the M&A environment, asset quality, growth prospects, and/or other regulatory issues currently facing the industry.*

4:45 p.m.

**Arbitration (Re) Considered**

Judge Robert C. Pate, Corpus Christi  
*The promise of the Alternative Dispute Resolution movement, particularly arbitration, was of prompt, fair, resolution of disputes between parties with more predictable results all at a lower overall investment of party time, legal fees and expense. Has this promise been realized? Is arbitration less expensive? Are arbitration awards a "fair" resolution? Does arbitration serve your best interests?*

5:15 p.m.

**Health Care Reform - Compliance and Political Outlook**

John Burkholder, Burkholder Corporation, Dallas  
Vanessa Scott, Sutherland, Washington, DC  
*A comprehensive look at the Health Care Reform Law one year after passage, including up-to-date information on what regulations have been generated, what changes have been made and what to expect in the coming months and years as it pertains to both employers and employees.*

6:00 p.m.

**Reception**

*Sponsored by: Sutherland*

# Friday, April 1, 2011

7:00 a.m.

## Breakfast Buffet

8:00 a.m.

## General Session and Opening Remarks

Cary Plotkin Kavy, Program Chair, Legal Conference  
Cox Smith Matthews Inc., San Antonio

8:00 a.m.

## “Capital is King” – Options for Getting More

Chet A. Fenimore, Fenimore Kay & Harrison LLP, Austin  
T. Alan Harris, Jr., Harris Law Firm PC, Houston  
Jean-Luc Servat, RBC Capital Markets, San Francisco, CA  
*The panel will survey current capital requirements and alternatives for obtaining new capital, including: corporate law affecting common or preferred stock offerings; pricing stock offerings; using a placement agent to sell your stock; potential conflicts of interest in insider stock purchases; regulatory considerations for investments from private equity; holding company loans; and the Small Business Lending Fund.*

9:00 a.m.

## Pre-emption and Exportation Under Dodd-Frank

Ann Graham, Business Law Institute, Hamline University, Saint Paul, MN  
Cheryl Crandall Tangen, Cheryl Crandall Tangen, P.C., The Woodlands  
*Dodd-Frank scaled back federal preemption of state consumer laws to three alternative bases: 1) discrimination against the federal institution; 2) significant interference with exercise of federally granted powers; or 3) statutory preemption. What happens to existing preemption determinations? What can be “exported” by federally insured institutions? The presenters fearlessly predict what’s preempted and what’s not with their “Preemption Prognosticator Protocol.”*

9:45 a.m.

## Refreshment Break

10:00 a.m.

## So Which of These Gazillion New Regulations Apply to My Bank?

James L. Pledger, Jackson Walker L.L.P., Austin  
*With all of the new regulations that that will be generated as a result of Dodd-Frank added to the usual list of regulatory actions, bank regulatory compliance becomes harder by the second. Increasingly, more regulations impose different standards on banks depending on their size and some of the new rules reflect an attempt to codify industry ethics. This presentation focuses on the growing list of new regulations and regulatory agencies that banks must keep up with and pertinent regulatory thresholds.*

10:30 a.m.

## Expanding Whistleblower Protections: Evading Liability and Ethical Dilemmas

Thomas Bundy III, Sutherland, Washington, DC  
*Whistleblower protection in the financial services industry involves an ever-changing landscape. Whether it’s new protections afforded under the new health care legislation, Restoring American Financial Stability Act, Dodd Frank Act, Sarbanes-Oxley or the Whistleblower Protection Enhancement Act, financial services companies must be prepared to identify risks and develop appropriate compliance programs. This presentation will discuss the new whistleblower protections and identify best practices (policies, compliance programs, and training) to help avoid liability and ethical dilemmas.*

11:00 a.m.

## The Future of the Thrift Charter

Frederick R. Casteel, Alvarez & Marsal, Dallas  
*This presentation will contain a brief history of the thrift charter and the Office of the Thrift Supervision (OTS). Comments will*

*include the major differences between the thrift charter and a bank charter. A discussion of the merger of OTS into the Office of Comptroller of the Currency (OCC) as a result of recent legislation will also be covered.*

11:30 a.m.

## Chairman’s Choice

Speaker(s) and topics to be determined

12:00 noon

## Lunch

*Sponsored by: RBC Capital Markets*

1:00 p.m.

## Afternoon General Session Dodd-Frank Panel

Gilbert D. Barker, OCC, Dallas  
Charles G. Cooper, Texas Department of Banking, Austin  
Robert D. Hankins, Federal Reserve Bank of Dallas  
F. John Podvin, Jr., Haynes and Boone, LLP, Dallas (moderator)  
*This session will focus on how the regulators are implementing the Dodd-Frank Act. Commissioner Cooper will be returning from a trip to Washington to address these issues and should have some very fresh information to share with attendees. Other regulators will also discuss how their agencies are implementing the hundreds of regulations and studies that impact our industry.*

2:00 p.m.

## Critical Insurance Coverages During Bank Acquisitions

Brien O’Connor, Texas Bankers Insurance Agency, Austin  
*During turbulent times banks will be bought and sold. Insurance coverages become extremely important. It is vital that they are reviewed before the sale or acquisition to be sure the necessary coverages are in place. Brien will provide an overview of critical coverages found in both the Financial Institution Bond and the Directors and Officers Liability policy.*

2:20 p.m.

## When Insurers Attack – How Insurers are Likely to Respond to a Bank Failure Today

Thomas B. Alleman, Cox Smith Matthews Inc., Dallas  
*Tom, who currently represents banks on insurance issues, presents an update on how bank professional liability, D&O and bond insurers are responding to claims arising from the current wave of failures, class action litigation on overdraft charges and other current topics.*

2:45 p.m.

## Refreshment Break

3:00 p.m.

## Making the Grade: Which Directors Deserve an A+?

Catherine A. Ghiglieri, President, Ghiglieri & Company  
*Board assessments and self-evaluations are Sarbanes-Oxley best practices for non-public financial institutions, but CEOs and directors are unsure what to do and a little hesitant of the possible outcomes. Learn practical approaches to conducting board assessments and self-evaluations of boards and board committees to improve the grade of your board to an A+.*

3:45 p.m.

## Bank Holding Companies in Crisis – New Developments and Selected War Stories

Scott A. Almy, The Almy Law Firm, PLLC, McKinney  
Ian Peck, Haynes and Boone, LLP, Fort Worth  
*Panelists will discuss recent events in connection with bank and bank holding company failures and share some personal experiences regarding distressed bank situations.*

4:15 p.m.

## Adjourn

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*Please register the following:*

Name <input type="checkbox"/> Mr. <input type="checkbox"/> Ms.	Title	
Firm/Bank		
Street Address	City, State, Zip	
Mailing Address (If different from above)	City, State, Zip	
Phone	Fax	Email

**Registration Fee** (Deadline March 8, 2011):

- \$525 TBA/TABC Members (\$625 after March 8, 2011)
- \$1,050 Non-Members (\$1,250 after March 8, 2011)
- \$262.50 Government / Regulatory Employees  
(\$312.50 after March 8, 2011)

\$ \_\_\_\_\_ TOTAL ENCLOSED

For IRS reporting purposes, the food cost portion of your registration is approximately \$300.

**Please complete and mail with check to:**

**Texas Bankers Association**  
**P.O. Box 2569, Austin, Texas 78768-2569**  
**800-462-7295 / 512-472-8388 phone**  
**512-473-2560 fax**

**Online registration is now available for TBA members.**

Please go to: [www.texasbankers.com](http://www.texasbankers.com) and use the member login to access registration.



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Association  
One Industry. One Vision. One Voice.

**Hotel Information:**

Barton Creek Resort and Spa, Austin, TX  
Room Rate: \$169.00 Single/Double plus 9% resort charge  
Reservations: 1-800-336-6158  
Group Name: TBA Annual Legal Conference  
**Hotel Room Block Deadline: March 8, 2011**

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