
Newsletter of the RMA New England Chapter June 2015

# 2015 1st Half of the Year Recap

We've had a terrific and eventful 1st half of 2015 at the RMA New England Chapter. For those who have been at one of our events, there were opportunities to get market updates, learn about current trends, get the inside scoop for what your competitors are thinking about, network, and so much more. This issue of our newsletter will focus on covering the highlights of those events.

Before we share with you the details of what we've been up to on the pages that follow, it is important to reiterate what we are hoping to achieve this calendar year in our footprint. We want to make this year the year of mentoring. As Baby Boomers are retiring and the new generations are coming in, it is important to create the right environment to mentor, coach, train, and nurture the new talent (see in the next newsletter an excerpt from the article by one of our board members titled *A New Generation of Bankers: Turning a Talent Crisis into a Success Story,* published in the RMA Journal). It is equally important to develop those who are moving into mid-level and senior management roles to replace our Baby Boomers.

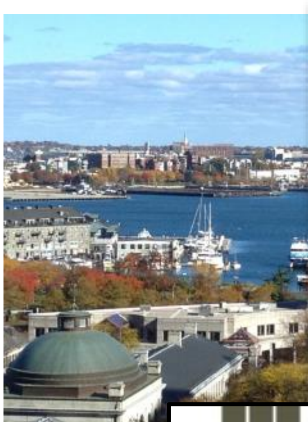
Below are the tips on how to become a quality mentor for your rising and existing talent:

1. Understand the role of a mentor – Mentors can help to interpret or convey organizational (or industry) information pertaining to the following:
   - Explain structure, value, and internal dynamics;
   - Reinforce stronger performance attributes and address potential areas for improvement;
   - Help identify opportunities for the mentee to shine and advice on mistakes to avoid;
   - Provide guidance on working through difficult issues;
   - Act as a sounding board; and
   - Provide encouragement and motivation.

2. Maintain confidentiality – Part of the benefit of having a mentor is that mentors can be used as a non-threatening sounding board for ideas about potential interests, potential career paths, internal dynamics, and sensitive professional issues. However, these types of open discussions can only happen if the mentee believes that these conversations will be held in strict confidence. To be a quality mentor, you have to develop trust with your mentee and hold all your conversations in strictest confidence, unless your mentee gives you a permission to share the details with someone else.

3. Have a purpose – While meeting periodically is helpful for deepening a bond between mentor and mentee, striving to accomplish something through each meeting will likely lead to a feeling of mutual accomplishment for the both parties. This can start with the mentor asking the mentee questions about the mentee's goals for the relationship. Leaving each meeting with an action item for the mentee to complete before the next meeting is essential.

4. Measure the success of the relationship – Success can be measured by the commitment of each party to follow through with attending scheduled meetings, how happy both parties are with the engagement, whether the mentee feels that she or he is being challenged, and the energy that the mentee has to take positive action(s) after each meeting.



## In This Issue


# Meet Our Board Member - Don Bedard

Donald Bedard is a thirty-four year veteran of the New England Banking community. He joined The Lowell Five Cent Savings Bank in September of 2004 as Vice President of Credit and Administration and was assigned the responsibility for enhancing the credit culture and operational efficiencies of the Bank. He is now the Chief Lending Officer and is directly responsible for the oversight of all aspects of the various lending platforms at the Bank.

Don is also a proud member of the Board of Directors of the RMA - New England Chapter and has achieved the Credit Risk Certified (CRC) designation from The Risk Management Association of America.

While Don has been involved in many aspects of the New England Chapter, he has a particular passion for the education and advancement of young talent in the industry. He served for almost 15 years as an instructor for the annual RMA Credit for Commercial Lenders (CCL) course held in Boston, MA each fall. In addition, he has been a host and instructor at the widely successful annual Loan Officer Resident Training Seminar (LORS) held in Exeter, NH each spring. As his duties at the Bank have expanded, he has relinquished his direct instructor roles in these areas. However, he remains actively involved with the educational arm of the Chapter and holds the position of Past-President as well as Chairman of the LORS Committee.

Don is active in the local business community, donating time and efforts to various local organizations. Presently, Don serves as the Treasurer and Chairman of the Finance Committee for the Merrimack Repertory Theatre (MRT). He also sits on the Advisory Board of the Lazarus House Ministries out of Lawrence, MA. Lastly, Don holds the title of Vice President of the Executive Board of the Lowell Development Financial Corp. (LDFC) in Lowell, MA.

## 2015 RMA Annual Risk Management Conference in Boston!

**November 1 - 3, Boston, MA**

Plan now to attend RMA's biggest event of the year at the Sheraton Boston Hotel, in Boston, MA. The following keynote speakers will be headlining the conference and providing their insights into the regulatory environment, the future of banking, and the economy:

- **Thomas J. Curry**, Comptroller of the Currency, OCC
- **Richard K. Davis**, Chairman, President and CEO, U.S. Bancorp
- **Mark Zandi**, Chief Economist, Moody's Analytics

Register before July 31, 2015 for the best price. Click here to access agenda, registration, and other pages.

## Commercial Real Estate Appraisal Managers' Forum

**November 9 - 10, Cambridge, MA**

Click here to access agenda, registration, and other pages.

## Commercial Real Estate Lending Forum

**November 9 - 10, Cambridge, MA**

Click here to access agenda, registration, and other pages.

## Loan Review Department Managers' Forum

**November 9 - 10, Cambridge, MA**

Click here to access agenda, registration, and other pages.


## Firm Profile

The law firm of **Hackett Feinberg P.C.** was established in 1997 and is a combination of the practices of nineteen attorneys - eleven partners and eight associates - with decades of combined legal experience. Prior to the establishment of the firm, seven of the ten members of the firm had worked together for many years at a prominent Boston law firm, and this spirit of a cooperative effort among colleagues still characterizes the firm. The firm's attorneys cover a broad range of practice areas including commercial and real estate lending transactions, creditor's rights, business insolvency, litigation, general corporate, employment and tax matters, and consequently have the ability and expertise to provide the highest quality legal services for most debtor/creditor and business matters. Our representation of lenders includes the enforcement of secured creditor remedies including the use of receiverships, assignments for the benefit of creditors, trust mortgages, secured party sales, foreclosure, Section 363 sales, and Chapter 11 liquidating plans. All attorneys are licensed to practice in the Commonwealth of Massachusetts and meet all requirements of Massachusetts laws with respect to the practice of law in the Commonwealth. Many of our attorneys are also licensed in other New England states and New York. The firm is located at 155 Federal Street, in the heart of Boston's financial district, and all attorneys and support staff operate from this location.

# Defensive Banking 101 by Hackett Feinberg, P.C.

On Wednesday, February 25, 2015 Boston Private Bank & Trust Company headquartered in the heart of Post Office Square in Boston's financial district hosted an event titled Defensive Banking 101. The event was delivered by this year's Gold Sponsor Hackett Feinberg, P.C. It drew dozens of commercial bankers in person and on the conference line, both tenured and rising professionals. The goal for the event was to provide a comprehensive summary of key legal phases in which a commercial banker may be involved, best practices, and how to balance doing what's right for the borrower with protecting the bank's assets.

*The event's agenda consisted of:*

- Common Lender Liability Claims
- Pre-documentation and documentation phases
- Workout and litigation
- Bankruptcy

Attorneys from Hackett Feinberg touched upon the issues of verbal promise and how it has to be consistent with written communications. The counsel reminded the audience to ensure fair dealing with borrowers and not to interfere with how a borrower is managed. Our job as commercial bankers is not to tell the owners and operators how to run their businesses.

The presenters talked about the role of the commitment letter and whether it should survive loan documents. They also discussed how the commitment letter and loan documents interact with each other. Other topics covered were issues of guarantees, including a recommendation to have a separate guarantee document. The audience was reminded of the joint and several guarantee features as well as the issue of consideration that's so familiar to tenured bankers. It was also interesting to hear a discussion around upstream and downstream guarantees. Furthermore, it was useful to be reminded of the mechanics of the UCC filing, amendments, and searches, as well as to hear war stories related to the UCC and hidden items. The grace period concept was also mentioned as one of the areas where commercial bankers can make mistakes.

This was a successful event where tenured and rising bankers had valuable takeaways. While it is not possible to list all the material discussed or we risk making this newsletter the size of War and Peace, we hope that you will join us for future events to experience for yourself their content and network-


# Defensive Banking 101 by Hackett Feinberg, P.C. *cont'd*

ing rich environment. There is just nothing like being in the audience! As an added bonus, the event was covered by the RMA Journal's Editor Frank Devlin from RMA's Philadelphia headquarters. You can read his article below.

*********************************

## Be Proactive Through the Entire Loan "Life Cycle"

By Frank Devlin, RMA Journal May 2015, copyright © RMA

As a longtime attorney for banks, John Hackett is well aware of the pressures to produce in a challenging industry. "It's a tough environment out there for bankers," said Hackett, of the Boston firm Hackett Feinberg P.C. at a recent RMA chapter event in Boston. "There is a lot of competition for deals. Your job is to book those assets, so you're anxious to get loans committed to paper and into loan documentation."

But it's important for bankers, even in that high-pressure environment, to pause and make sure they are following best practices to help avoid litigation down the road. "There's an opportunity at any phase of a loan for danger and problems," Hackett warned.

With that in mind, "Defensive Banking 101" - a discussion presented by RMA's New England Chapter - took what moderator Howard M. Brown of Hackett Feinberg called a "life cycle" approach. It highlighted possible legal pitfalls of the lending relationship—from initial talks and correspondences about terms all the way to the worst-case end scenarios of default and bankruptcy.

(Note: Worst-case scenarios are something all Bostonians know about now that they have been through a winter of epic snowstorms. To get to the RMA event at Boston Private Bank & Trust Company's headquarters, attendees had to navigate streets and sidewalks lined with snow piles as high as themselves.)

Leading off the event, Brown noted that banks can be sued over the perception that a promise was broken, even if that promise was never included in a written contract. "Sometimes we think of contracts as only formal, written documents," he said. "But you don't need to have a formal document. If someone says you promised to do x, y, or z, that's enforceable."

While Brown said to be mindful of spoken words that could be construed as an oral contract, Hackett spoke about written correspondences—in particular, e-mails—that could be seen as binding even when the bank never intended them to be.

When bank representatives discuss possible loan terms by e-mail with borrowers, he said, "every e-mail should probably contain an appropriate disclaimer." He suggested a disclaimer in initial term sheets or proposal letters that is broad and avoids terms such as "commit," "offer," and "extend." Phrases that a disclaimer should contain include "terms are proposals and are subject to change" and "formal approval is required by lender before a commitment may issue."

Hackett provided this sample disclaimer for a proposal letter: "The financing proposal set forth below has been prepared on the basis of certain information and materials provided by you to the lender and at a time when the lender has not had an opportunity to complete its due diligence investigations. The terms and conditions set forth below are the terms and conditions which the undersigned will present for approval to the appropriate approval authorities within the lender. This proposal is not a commitment by the lender to make a loan or loans on the terms set forth herein. In addition, the terms contained in this proposal may be subject to change or to additional terms and conditions required in connection with any final commitment which may be made by the lender."

Hackett, whose portion of the event focused on pre-documentation and documentation, also stressed the importance of conducting diligence searches up front. "You want to be sure you conduct them on all parties, including guarantors," he said. "Even if everything comes back clean, other issues could arise, such as secret liens."

Examples of secret liens include the progress payments the Department of Defense makes to defense contractors before goods are delivered. If the goods do not get delivered, those payments are secured by the goods (even in front of a perfected UCC filing), so that has to be taken into account. Hackett said a bank should ask manufacturing borrowers up front, "Do you do work for the Department of Defense? Do you receive progress payments?"

Other examples of secret liens include landlord liens, distraint rights, an excise tax lien on assets acquired by a borrower from a corporation, warehouseman liens and other statutory possessory lines, as well as subrogation rights of insurance companies.

Hackett also advised against granting grace or cure periods that would follow a default, particularly with revolving loans, because "you want to be able to respond quickly." He also said to avoid the word "reasonable" in describing costs and expenses in loan contracts, because "reasonable" leaves too much room for interpretation and "opens the door to litigation."

Richard E. Gentilli of Hackett Feinberg talked about workout and litigation. Like Hackett, he preached the importance of caution in e-mails.

*See the RMA Journal's May 2015 issue to read the rest of this article as well as other valuable articles and resources available to the RMA members.*

# Financing Mergers and Acquisitions

**Wednesday, March 25, 2015 at Bentley University**

A panel of four Boston-area experts spoke before a packed audience of bankers and professionals at Bentley University on the key aspects of financing mergers and acquisitions.

**Panelists:**
Kristina Minnick Westerling, Associate Professor of Finance, Bentley University
Jack Finning, Partner, Alexander Aronson Finning
John Hackett, Attorney at Law, Hackett Feinberg P.C.
Mitchell Feldman, Senior Vice President, Santander Bank, N.A.
**Moderator:**
David Keller, Senior Vice President and Chief Risk Officer, Salem Five Bank.

*Topics discussed included the following:*

- Primary reasons some M&As fail to meet expectations
- Enterprise value: what is it and why is it used?
- Divergence of seller expectations and market reality
- Impact of stock purchase vs. asset purchase on due diligence and loan structure
- Tax impact on buyer and seller of stock sale vs. asset sale
- Material risks to banks of highly leveraged transactions
- Regulatory impact on commercial bank appetite for Highly Leveraged Transactions
- Intercreditor and subordination issues
- Role of banks and non-banks

Bentley's Minnick Westerling led off the panel with an in depth discussion of the motivations for mergers and acquisitions and the critical elements for success and failure, wrapping up her observations with classic examples of those that have succeeded and badly flopped.  Her presentation was followed by Jack Finning's insight into the accounting considerations in mergers and acquisitions, including the importance of obtaining an independent valuation, buyer due diligence, typical adjustments to the selling price, earnouts, employment contracts and non-competes. Providing a legal perspective of these transactions, John Hackett discussed the keys to structuring mergers and acquisitions, comparing stock purchases with asset purchases and how each impact the complexity of the transaction, the loan structure, and other important elements.  The panel discussion was wrapped up with a Q&A session with questions from the audience that represented nearly two dozen area financial or related institutions.

# RMA New England Chapter Annual Meeting
+
# A CEO Panel Event: What Keeps You Up At Night?

**Wednesday, May 6, 2015 at Federal Reserve Bank of Boston**

As tradition holds, the RMA New England Chapter combines its Annual Meeting with a signature event. This year our chapter built on a decade-long experience by our Rising Professionals Group. The Chapter's RPG started a tradition in 2004 of holding annual CEO Series events. For the Chapter's annual event, we brought together CEOs of three local banks:

**Christopher Oddleifson**, President & CEO of Rockland Trust Company
**William Parent**, President & CEO of Blue Hills Bank
**Wayne Patenaude**, President & CEO of Cambridge Savings Bank
Moderator - **Jack D'Ambrosia**, Chaston Associates

This was one of our chapter's most attended events that drew in excess of 120 guests from commercial banks, finance companies, accounting and law firms, and financial and other professional service firms. The attendees were from Boston, North Shore, South Shore, Metro West, Cape Cod, and even Rhode Island. The commercial banking community was represented by small community banks, top regional institutions, superregional banks, and well-recognized national banks. This was a terrific opportunity not only to interact and learn from our panelists but also to network with an incredible number of our peers.

In lieu of an ice-breaker, Jack D'Ambrosia flexed his humorous side and asked which auto company could describe each of the three banks present. The panelists' answers ranged from Ford F-150 to Tesla SUV to Lexus. (But we won't disclose which car represents which bank. This fine knowledge is only reserved for the attendees).


# A CEO Panel Event: What Keeps You Up At Night? *cont'd*

The first discussion topic was **cyber security**, a challenge more and more commercial bankers are painfully familiar with. "It is not a matter of whether you will get hacked but rather when," we hear more and more often.

One panelist highlighted that complex systems that are layered as a result of mergers and acquisitions at a commercial bank is one vulnerability. Understanding what you have and testing their security is essential. In addition, social engineering is a common threat to our industry.

The next panelist pointed out that we do not control our customers and vendors. Our organizations can become vulnerable not through a direct attack but because a business partner or customer was hacked or when a bank is impacted because one of those parties was affected. This is when relationship documents are important, outlining responsibilities related to cybersecurity and ensuring that each party understands them.

The last panelist expanded on our own employees being potentially vulnerable to an attack. Testing periodically by putting our employees on the spot is the unfortunate reality we have to face in order to prevent a hack. One of the most significant takeaway points is that if you are hacked (and really before that happens), you have to have a communication and other rapid response plans that are well-designed, understood, and tested. This is the key to your survival. To put things in perspective, it takes on average 200 days before hacking is discovered.

Another area of discussion was **growing while balancing credit risk**.

One panelist reminded that in structure, credit risk, and pricing we can't have it all. Usually at least one has to give, but it often ends up being more than just one. Pricing needs to continue to remain flexible, but it is essential to price based on a relationship. What matters most is whether you are able to execute consistently. Focusing on relationships, scrutinizing and being selective with your terms, and staying close to your customers can be a recipe for success.

The next panelist discussed the need to diversify. Picking your spots can allow your organization to be successful. However, you have to be prepared to move quickly for the right opportunity or walk away, if needed.

The last panelist qualified the current environment as "the race to the bottom". He shared an example of a prospective customer who did not want to hear a story of a 20-year relationship that this bank was proud of. Instead, the business owner was solely focused on the fact that five banks were competing for his business. Part of our responsibility to educate customers should be to warn them that the best (on the surface) deal will cause the lender to come back to take everything, when there is a slightest bump on the road. There is no room for error there.

And finally came the question that the audience was so patiently awaiting - **what keeps you up at night?** While our panelists have various concerns on their minds, they are all managed risks and not something the CEOs lose sleep over (as we would expect from chief executives). One panelist commented that he felt motivated and charged as he was looking at some challenges and therefore opportunities. One area of concern mentioned was the elements that we can't control. Shadow banking is one of them, as was the fact that an estimated 30% of credit is handled by unregulated financial institutions. Another concern was employee engagement. Statistics on engagement in the corporate world in general are appalling and something our guests were working to become more successful at.

The Q&A that followed was active and engaging. Topics ranged from questions about Millennials and tracking data on tenures and retention, to operational efficiencies and feeling the pulse of the organization at all levels. The Millennials' discussion highlighted the need to attract younger generations not only as employees, but also as customers. Retention is another challenge, especially with more mobile younger cadres. Some solution that are in the works are paid volunteer days, rotational programs, and embracing technology and social media.

This brief summary of the event can hardly do justice to the caliber of speakers, issues raised and solutions proposed, and the amount of learning and networking. The only way to experience it all is by attending. We hope to see you at future events in the second half of 2015. Connect with us on LinkedIn and see our website to stay informed of the upcoming events.


# Special Thanks to Our Sponsors

## Our Chapter appreciates the support of our Gold Sponsor

Hackett Feinberg P.C.

**Hackett Feinberg P.C.** is a mid-sized Boston law firm specializing in the representation of national, regional and community banks, institutional and governmental lenders in commercial lending and commercial real estate lending activities. Our lawyers are experienced in enforcement of creditors' rights in state and federal courts, including bankruptcy court. We also counsel small and mid-sized businesses throughout New England, including formation of entities, real estate related transactions, business disputes and employment matters. HF offers sound, attentive and practical legal services to our clients at reasonable rates.

## Our Chapter appreciates the support of our Silver Sponsors

BDC CAPITAL Financing Solutions

The oldest business development corporation in the United States, **BDC Capital** has been recognized locally and nationally as a leader and innovator in business lending and capital investment. Many of New England's leading financial institutions invest in BDC to help promising companies expand. Over 60 years, we have invested more than $1 billion in thousands of companies in New England.

CDC NEW ENGLAND MORE THAN A 504

**CDC New England** is a private, non-profit corporation originally started in 1981 as a Certified Development Company to provide SBA 504 Program loans to small businesses for the acquisition of fixed assets in Massachusetts. Three decades later, CDC has assisted companies throughout New England and now maintains five offices in the region. We are consistently ranked among the top 10% of all CDC's in the country.

CHASTON ASSOCIATES The Credit & Risk Management Company

**Chaston Associates, Inc.** is the leading independent loan review company in New England. Established in 1984, our firm has provided outsourced credit risk review and other consulting services to more than 200 banks located across the Northeast and points beyond. Currently, our customer base approximates 100 institutions reporting total assets ranging from $50 million to more than $5 billion.

CEIS REVIEW INC. Consulting Services to the Financial Community

**CEIS Review** is an independently owned consulting firm serving the needs of the commercial and savings bank communities as well as those of other commercial lending institutions. Our services include loan review, loan loss reserve methodology and validation, CRE portfolio stress testing, portfolio acquisition review, CRE concentration analysis, credit risk management process review, structured finance review, credit loan policy maintenance, problem loan advisory, credit analysis, regulatory relations, credit database formation, and loan and credit seminars.


# Meet the RMA New England Chapter Board

## Officers:

| President | Vice President | Treasurer | Secretary |
|---|---|---|---|
| **Richard Labrecque** | **Joseph Herzog** | **David O'Brien** | **Joanne Franco** |
| Citizens Bank | Rockland Trust | Rockland Trust | National Grand Bank |

## Directors:

| | | | |
|---|---|---|---|
| **Don Bedard**<br>Lowell Five Cents | **Dima Berdiev**<br>DNB Advisory | **Carol Brennan**<br>BDC Capital | **Diana Carito**<br>Salem Five |
| **Lana Delic**<br>Citizens Bank | **Brad Egan**<br>Santander | **Derek Ezovski**<br>Outsourced Risk Mgmt. Solutions LLC | **Joanne Franco**<br>National Grand Bank |
| **Michael Gallagher**<br>Enterprise Bank | **Kama Giedra**<br>Citizens Bank | **Joe Herzog**<br>Rockland Trust | **Lisa Krywucki**<br>Fidelity Cooperative Bank |
| **Richard Labrecque**<br>Citizens Bank | **Bruce Lemieux**<br>Rockland Trust | **Andrew Mahoney**<br>Cambridge Trust | **Will Montague**<br>Boston Private Bank |
| **David O'Brien**<br>Rockland Trust | **Katerina Papp**<br>Eastern Bank | **Tom Piemontese**<br>Century Bank | **Tom Sommerfield**<br>Blue Hills Bank |
| **Marilyn Tressel**<br>Boston Private Bank | **Paula Zaiken**<br>The Property & Casualty Initiative | | |

## Past Presidents / Board of Advisors:

| Immediate Past President (2012-14) | 2010-12, LORS | 2008-09, LORS |
|---|---|---|
| **Michael Gallagher** | **Don Bedard** | **Bruce Lemieux** |
| Enterprise Bank | Lowell Five Cents | Rockland Trust |

Strategic Planning Committee, Audit, Bylaws
**Andrew Mahoney**
Cambridge Trust

Interested in getting involved in the RMA New England?

**We want to hear from you!**

We are a group of high energy banking professionals who put together educational, networking, panels and various other events and products. We work within our business community to bring value to our peers through a wide range of services.

RMA New England Chapter
10 Back River Rd.
Amesbury, MA 01913
Julie Conroy, Administrator
978-263-9003 | Email: julie [at] rmanewengland.org