
Indemnification of Directors and Officers- Recent Developments in Delaware Law

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I. Indemnification and Advancement of Expenses

Under Section 145 of the Delaware General Corporation Law ("DGCL"), corporations have extensive power to indemnify directors, officers and others against threatened, pending and completed legal actions. Under Section 145(e) of the DGCL, this power extends to providing advancement of legal fees; provided that the director or officer agrees to repay such advancement if ultimately determined not to be entitled to indemnification. Delaware corporations can opt to protect their directors further by including in their corporate charters a provision eliminating or limiting personal liability for monetary damages for breach of fiduciary duty as a director and/or by entering into separate indemnification agreements with their directors and officers.

Recent legislation and decisions from the Delaware Chancery Court have cast new light on the law regarding indemnification of, and advancement of expenses to, directors and officers. Accordingly, Delaware corporations and their advisors should review their indemnification arrangements with directors and officers to ensure that the arrangements provide the protection intended.

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