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• We Are Your Credit Union Legal Department •

Directors' Duties, Responsibilities and Liability

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DIRECTOR DUTIES AND RESPONSIBILITIES

- ◉ Directors are fiduciaries owing the highest responsibility under the law.
- ◉ Directors owe duties of loyalty and due care.
 - ◉ Loyalty – place the interests of the credit union ahead of personal interests.
 - ◉ Due care – act as a reasonable person would act under like circumstances.

DIRECTOR DUTIES AND RESPONSIBILITIES

- Duties and responsibilities come from three sources:
 - Michigan Credit Union Act (MCUA)
 - Credit union bylaws
 - State and federal common law

MCUA

- Section 341 sets forth qualifications:
 - Member in good standing;
 - Bondable;
 - Never been removed from a similar position;
 - No conviction for dishonesty or breach of trust in last 20 years;
 - Never been convicted of violating a law related to financial institutions;
 - Not habitually negligent in financial obligations as determined by board.

MCUA

- Section 342 sets forth statutory duties and responsibilities;
- Primary responsibilities under MCUA:
 - Maintain safety and soundness
 - Provide general direction of the business affairs, funds and records of the credit union

MCUA

- How does the board provide general direction?
 - Hiring a CEO;
 - Approving annual budget;
 - Adopting policies;
 - Oversight through reports, audits and examinations.

DIRECTOR LIABILITY

- ◉ Directors can be held personally liable if they breach their fiduciary duty and the breach results in financial harm to the credit union.
- ◉ Volunteer directors are held to same standard as paid directors.
- ◉ Ignorance and lack of training are not a defense.

DIRECTOR LIABILITY

- ◉ Directors may expose themselves to personal liability by:
 - ◉ Failing to act in good faith;
 - ◉ Failing to act with due care and diligence;
 - ◉ Engaging in self-dealing or having a conflict of interest;
 - ◉ Acting in areas where they lack authority.

HOW TO AVOID LIABILITY

- ◉ Continuing and continuous education;
- ◉ Have a basic understanding of laws and regulations;
- ◉ Review and understand financial statements;
- ◉ Plan and monitor the annual budget;
- ◉ Identify areas of risk, set limits and/or tolerances, and monitor;
- ◉ Avoid even the appearance of a conflict of interest;
- ◉ Understand limits of authority and do not exceed;
- ◉ Establish clear policies and monitor compliance;
- ◉ Make informed decisions.

HOW TO AVOID LIABILITY (CONT.)

- ◉ Maintain confidentiality of credit union affairs;
- ◉ Report and take action against wrongful conduct;
- ◉ Don't rubber stamp or micro-manage;
- ◉ Know when to get legal advice;
- ◉ Keep the best interest of the members in mind;
- ◉ Understand that each board member has no individual power (other than his or her vote) and that you must respect and act in accordance with the majority's decision, even when you disagree.

LAWSUITS AGAINST DIRECTORS

- ⦿ Individual directors and the board as a governing body may be sued by:
 - ⦿ Members
 - ⦿ Vendors
 - ⦿ Regulators

LAWSUITS AGAINST DIRECTORS (CONT.)

- ⦿ Most common reasons directors are sued individually:
 - ⦿ Employment issues
 - ⦿ Lending and collection issues
 - ⦿ Credit union mismanagement

BUSINESS JUDGMENT RULE

- ◉ Directors are not responsible for the outcome of their decisions provided the directors, individually and collectively, used due care in reaching decisions.
- ◉ The level of due care needed will depend on the issue being considered and its potential impact on the safety and soundness of the credit union.

RESPONSIBILITIES FOR SAFETY AND SOUNDNESS

- Ensure adequate capital;
- Ensure proper bonding of officials and employees;
- Ensure sufficient insurance where needed;
- Institute appropriate controls;
- Review and act on audit and examination findings;
- Hire, supervise, and retain competent executive management.

CLOSING REMARKS

- ◉ Be diligent;
- ◉ Regularly attend board meetings;
- ◉ Review meeting materials;
- ◉ Ask questions and make sure you understand the answers and issues;
- ◉ Exercise independent judgment;
- ◉ Be loyal and put the interests of the entire membership first.

Questions