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I. OFFICER AND DIRECTOR RESPONSIBILITY

A. GENERAL DUTIES OF OFFICERS AND DIRECTORS

In general, directors and officers of credit unions have the same duties and obligations as persons holding similar positions in other banking corporations. These include the three basic duties of **obedience**, **diligence**, and **loyalty**. Not only do directors owe the credit union the utmost good faith but they must also exercise their duties with the degree of care others would apply in the same position. It is a higher standard of care than that applied to other business corporations.

1. **Obedience** requires that directors ensure that a credit union's activities remain within the scope of the Powers conferred upon the credit union by its charter, bylaws, as well as the Federal Credit Union Act and NCUA regulations, for directors of federally chartered credit unions, or state statutes and regulations, for directors of state-chartered credit unions. Both willful violations and negligent disobedience of this rule may result in liability to the director.
2. **Diligence** requires that a certain degree of care be exercised in the conduct of credit union affairs. Several jurisdictions impose an even higher standard by requiring that directors exercise that degree of care that ordinarily prudent persons would exercise under the same or similar circumstance in like positions. Failure to observe the appropriate standard of care can again result in a director bearing personal liability for the losses suffered by the credit union.
3. **Loyalty** requires that directors refrain from engaging in their own personal activities in such a manner as to injure or take advantage of the credit union. Generally, this requires that directors not make secret or private profits out of their official position, and must give to the credit union the benefit of any advantage they obtain in their official positions.

These three responsibilities and obligations are owed to the credit union itself and to the credit union's members as individuals. Examples of common violations of these duties include (1) obedience: allowing the credit union to lend more to one person than permitted under state or federal law; (2) due diligence: failing to attend meetings or keep informed about information affecting the financial health of the credit union; and (3) loyalty: failing to disclose a financial interest in the award of a contract for service to be performed by a third-party vendor for the credit union.

B. BUSINESS JUDGMENT

Directors, generally, will not be held liable for honest mistakes of judgment if they have acted with due care, without disabling conflict, and in furtherance of a rational business purpose. However, it is generally said that directors of financial institutions owe a higher duty than other corporate directors. This is because the care of a director of a financial institution is measured against directors operating "under similar circumstance" – that is, other directors of financial institutions.

C. SPECIFIC OBLIGATIONS

1. **Duty to Direct** – A primary responsibility of a Board of Directors is that they must direct the operations of the credit union. The Federal and State credit union acts require that the Board of Directors meet at least once a month and confers upon them the responsibility for the general direction and control of the affairs of the

credit union. The directors cannot delegate responsibility for the management of the credit union entirely to others. Therefore, the Board of Directors has a duty to supervise, to have general knowledge of the credit union's business, and to know and give direction with regard to the important internal affairs of the credit union.

It is equally important that directors recognize and observe the danger of intense involvement with the day-to-day operation of the credit union. Personal liability is more likely to result where board members are so closely linked with the operation of the credit union that the director can be presumed to have known or even ratified acts causing the credit union a loss.

2. **Duty to Disclose Conflicts** – Directors may not place themselves in a position where they may obtain pecuniary benefit from any action taken in their role as director, nor may they take part in any action where they have a conflict of interest. For instance, the Bylaws prohibit any director, committee member, officer, agent, or employee of the credit union from directly or indirectly participating in any deliberation of, or the determination of, any question affecting their pecuniary interest or the pecuniary interest of any corporation or other association in which they are directly or indirectly interested. Moreover, a director is under a duty to disclose their conflicts of interest to the credit union.

D. CHECKLIST OF DIRECTOR DUTIES

To protect against personal liability, a director must:

1. Attend meetings regularly, read credit union publications and financial news to keep fully aware of the economic climate, competition, and credit union powers
2. Review from time to time the credit union's articles of incorporation, bylaws, policies and relevant state or federal statutes
3. Avoid completely any conflicts of interest in dealing with the credit union
4. Insist that the minutes accurately reflect opposition to matters acted upon at meetings
5. Request legal opinions on matters with unclear legal ramifications
6. Obtain and carefully review all periodic financial reports
7. Review director and officer liability insurance coverage

Specific board responsibilities of the director include:

1. Maintaining general direction and control
2. Meeting at least monthly
3. Establishing operating policies
4. Acting on membership applications
5. Maintaining confidential all member relations
6. Fixing any maximum share limits and classes of share limits
7. Fixing loan policies regarding interest rate, maturity, and security
8. Establishing collections policies and procedures

9. Authorizing needed investments and borrowing
10. Declaring dividends and interest refunds
11. Designating depositories for funds
12. Appointing membership officer
13. Executive committee and other committees as needed and filling committee vacancies
14. Hiring, fixing duties, and compensation of President/CEO and other employees as needed
15. Determining surety bond needs at least annually
16. Acting on loans to directors, non-directors committee members and employees
17. Planning and holding annual meeting
18. Requesting amendments to charter and bylaws as needed
19. Appointing security officer and determining security needs
20. Reporting to members at annual meeting
21. Establishing a record preservation program

Areas for written policy include:

1. Organization
2. Board and manager relations
3. Establishing operating policies
4. Personnel: hiring, promotion, vacation, ect.
5. Lending
6. Budgetary and financial control
7. Cash and investment control
8. Earnings and reserves, including dividends and refunds
9. Education, advertising, and promotion
10. Loan collection practices
11. Data procession
12. External and internal audit procedures

II. LEGAL RESPONSIBILITIES

Presented by Mike Blalack of Blalack & Williams, Attorneys, Dallas, Texas at the International Credit Union Dinner sponsored by the Amarillo Chapter of Credit Unions.

“This material is designed to provide general information prepared by professionals with regard to the subject matter covered. Although prepared by professionals, this material should not be utilized as substitute for professional service in specific situations. If legal advice or other expert assistance is required, the service of a professional should be sought.”

A. DIRECTOR’S GENERAL RESPONSIBILITIES

The basic charge to the Board:

THE BOARD OF DIRECTORS SHALL HAVE THE GENERAL DIRECTION AND CONTROL OF THE AFFAIRS OF THE CREDIT UNION.

1. Set the overall tone of general policy
2. Have control of the credit union’s affairs by:
 - a. Seeing that competent people are employed to conduct daily affairs
 - b. Observing the use and maintenance of approved policy
 - c. Insuring prudent practices
 - d. Allocating sufficient resources as required

B. TWO BASIC DUTIES

1. Duty of Loyalty – The credit union comes first in conducting personal business. No director will receive an advantage over the general membership.
2. Duty to Exercise Due Care – A standard of “reasonableness” must be followed in conduct and decision-making.
3. Key Question: Can a Board Member make a mistake? YES
The test of a mistake is “Was reasonably prudent business decision made by the director, using sound business judgment?”

C. GENERAL PRINCIPLES APPLICABLE TO BOARD SERVICE

1. Absence of Compensation: Is not a defense nor a shield to liability
2. Lack of Experience: Is not a defense. A director must ensure that training is available.
3. Ignorance of the Law: Is not a defense. Applicable law will apply in any situation regardless of the circumstances.
4. Financial Institution Directors: Under current law are held to a higher standard of performance in their duties than other non-financial corporation directors.

D. SPECIFIC RECOMMENDATIONS FOR CREDIT UNION DIRECTORS TO PROPERLY FULFILL THEIR DUTIES AND AVOID LIABILITY

1. The easy answer: QUIT
2. The General Formula:
 - a. Know your duties and responsibilities
 - b. Carry them out
3. Specific Recommendations: Practice Preventative Medicine
 - a. Attend all meetings. Show “good faith and due care”. Be on time. Minutes should reflect time of arrival if late and time of departure if leaving before the meeting is adjourned.
 - b. Voice your dissent. Make your dissent a part of the minutes. If absent, the court will put you in the majority unless you ask for a review of the action and state a dissenting opinion registered in the minutes at a subsequent board meeting.
 - c. If you don’t understand something, ask questions until it is clarified.
 - d. See that accurate board meetings minutes are maintained. Minutes are the prime source of defense.
 - e. Supervise the credit union’s financial condition.
 - Check and know industry performance standards.
 - Review financial records and the operating budget.
 - Compare current financial reporting period to previous periods and look for trends.
 - f. Establish an Investment policy
 - g. Establish the following policies
 - Loan
 - Delinquency
 - Charge-off
 - Any other policies needed
 - h. It is very important to establish a personnel policy, which must be consistent.
 - i. It is very important to establish and maintain a good working relationship with regulatory authorities.
 - j. Understand the legal framework within which the credit union operates.
 - k. Maintain and review periodically director and officer liability insurance.
 - l. Do a bylaw for director’s indemnification. This has been done.
 - m. If a problem is identified, do something about it.