

**TEXAS STATE-CHARTERED**

**CREDIT UNION DIRECTOR'S GUIDE**



Texas Credit Union Department

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## **Introduction**

Serving as a Texas credit union board member represents a significant obligation of an individual's time and commitment but can also be very gratifying. Active, informed directors are pivotal to a credit union's strategic planning and success and therefore, hold positions of trust and honor. The credit union industry, and the regulatory environment it operates in, is constantly tested by changing marketplace and economic conditions. As a result, directors must be active, dedicated, and attentive to the institution's performance. Directors should be proactive while they play an integral oversight role in holding executive management teams accountable for compliance with the laws and regulations impacting credit unions, as well as the quality of products and services provided. Credit union directors are scrutinized at high levels by the media, government, members and others in the performance of their duties. Directors must act carefully and prudently to protect their own individual liability and ensure the credit union is operated efficiently and in accordance with applicable laws and regulations. This guide was developed to answer basic questions you may have as a board member of a Texas state-chartered credit union and provide resources for further information. This publication is not intended to replace legal counsel. Therefore, if you have specific concerns or questions regarding the responsibilities and liabilities of your role, you should contact a qualified attorney. Whether you're newly elected or a more seasoned credit union director, I applaud you for your willingness to represent the interests of your credit union's membership. You play a pivotal role in ensuring safe and sound financial services are available to the members you represent. I hope this publication assists in your understanding of that role and the responsibilities of this very important endeavor.

**John J. Kolhoff,  
Commissioner  
Texas Credit Union Department**

## **What is my role as a board member?**

Board members are elected to protect the interests of the members they represent. Said another way, board members are fiduciaries who steer the organization toward a sustainable future by adopting sound, ethical, and legal governance and financial management policies. The board is comprised of individuals who collectively establish the organizational vision and governs the credit union's overall activity. There is an important distinction between the individual opinion of each director and the pronouncements of the board. While individual directors are responsible to bring their viewpoints and experience to discussions on matters before the board, individually they hold no authority other than the right to vote on those matters. Authority to govern the affairs of the credit union rests with the board collectively and is communicated only through its pronouncements (called board resolutions) properly moved and approved by a quorum (or majority) of the directors. Despite differences of opinion expressed during the approval process, individual directors must unequivocally support board decisions and ensure the board speaks with one voice even if their vote on an issue was a dissenting opinion.

## **What are the individual responsibilities of a board member?**

The board of directors is ultimately responsible for the conduct of the credit union's affairs. [Regulatory Bulletin-2006-01](#) outlines much of the boards oversight duties. The board controls the credit union's strategic direction and determines the overall policies in which it will operate. A board must hire, and hold accountable, capable Executive management to ensure board policies and strategic plans are fully implemented and followed. While day-to-day operations are generally delegated to the CEO/management, the board is responsible for, and must assure through appropriate internal reporting and controls, that operations are in compliance with applicable regulations and internal policies consistent with safe and sound practices. The board monitors the credit union's overall operations and ensures management can meet the challenges created by growth, increased competition, and a changing marketplace.

Individual directors must become educated in the business of credit union operations to effectively serve. Professional development and training are strongly encouraged. The managing officers of the credit union must be supported and supervised by directors familiar with the credit union's affairs and who will take an active part in making policies and decisions. Directors should not be reliant on operational management to interpret financial data or other information received. Board members must be independent and able to question management about issues they do not understand or that are unclear. This helps ensure the credit union remains progressive, sound, and profitable. Generally speaking:

- Directors should thoroughly understand their duties and responsibilities under the Texas Credit Union Act (TCUA) found in the Texas Finance Code, Title 3, Subtitle D, Chapters 121 through 149 as well as their credit union's bylaws, common law and applicable regulations. Directors must take a pro-active approach in learning how to become competent in all areas necessary to effectively serve.
- Directors should have a genuine interest in their office, attend meetings regularly, and always keep well informed about the affairs of their credit union and the credit union industry.
- Directors should give undivided loyalty to their office and not engage in interests adverse to the credit union.
- Directors should not use their office for personal benefits by utilizing information gained by virtue of their position.
- Directors should be capable of retaining confidences, as required under the TCUA, and refrain from divulging confidential information gained through their position.
- The directors must be capable of evaluating facts, and free from prejudices or personal interest, in reaching sound and independent decisions.
- Directors should not lose sight of their primary responsibility, which is to protect the depositors who have placed their trust in them.

## **What is the purpose of and authority for regulatory examinations?**

As the chartering agency, the Texas Credit Union Department (TXCUD) is responsible to ensure the overall safety and soundness of the credit union industry within Texas. In that capacity, the TCUA outlines specific responsibilities of the Commissioner and his/her agents. These include requirements under [Texas Fin. Code Section §126.051](#) that a safety and soundness examination be conducted in each Texas state-chartered credit union periodically. A TXCUD examination evaluates a credit union's overall inherent risk profile, adequacy of risk management and the related appropriateness of capital and earnings performance. However, an examination does not meet the audit requirements found in [Texas Fin. Code Section §122.102](#). An audit is conducted to independently verify to the Board and membership that financial statements correctly and fairly represent the condition of the credit union. All Texas credit unions are required to maintain deposit insurance under [Texas Fin. Code Section §15.410](#). Under current rules deposit insurance can be provided by either The National Credit Union Administration (NCUA), the federal agency responsible for providing deposit insurance, or American Share Insurance (ASI), a private deposit insurance provider. The NCUA has promulgated rules which outline requirements for credit unions to maintain that insurance. As part of being a deposit insurer, the NCUA or ASI can perform a review to assess the level of risk the credit union presents to the related insurance fund which ultimately underwrites the deposit insurance. TXCUD, NCUA and ASI perform examinations to determine the overall safety and soundness of the institution and the likelihood of losses. The findings of each examination are communicated to the Texas Commissioner and the deposit insurance provider. Just as importantly, the results are submitted in a formal report to the directors of the credit union to ensure they are fully aware of any issues, including the level of regulatory concerns noted at their credit union. This information is presented in part to ensure the board has information necessary to reasonably fulfill their duties.

## **What is the board of directors' role in the examination process?**

The board of directors should be involved in communications with their examiner and must review the report of examination to obtain an assessment of the credit union's financial and operating condition. The report of examination addresses the credit union's safety and soundness, quantity of risk, quality of risk management, and the overall level of supervisory concern. Directors should thoroughly understand weaknesses and adverse trends identified during an examination and oversee operating management's plans to take or has already taken to address those weaknesses. The board must ensure supervisory concerns noted during examinations are corrected. The board may request to meet with TXCUD officials or examination staff at any time to discuss examination findings or the current condition of the credit union.

## **What are the legal liabilities of the board of directors?**

Director liability is based on holding a position of trust, the related duty to represent the membership's interests and carry out duties prescribed by statute and regulation. This responsibility, also referred to as *fiduciary duty*, is outlined by the credit union's bylaws and the courts. The fiduciary duties of the board are defined by the courts through common law and fall within the following fundamental categories: the *duty of care*, the *duty of loyalty*, and the *duty of candor or disclosure*. The fiduciary and statutory duties for Texas state-chartered credit union directors may be generally described as follows:

*Duty of Care*: This duty is a common law standard that holds directors to that degree of care which ordinarily prudent and diligent individuals would exercise in handling the affairs of others under similar circumstances. This means that directors must participate actively and to the best of their ability through the work of the board in order to assure themselves that all financial arrangements are safe, that all employees operate in a legal and ethical manner, and that all activities are within the law and regulations imposed on the credit union. [Texas Fin. Code Section §122.255](#) also defines specific misconduct of an official, director or employee for which administrative remedies can be instituted which include: (1) violating the TCUA, a rule adopted under this subtitle, or

another law applicable to a credit union; (2) violating or refusing to comply with a final order of the commissioner or commission; (3) willfully neglecting to perform an official or legal duty or willfully committing a breach of trust or fiduciary duty; (4) committing a fraudulent or questionable practice in the conduct of the credit union's business that endangers the credit union's reputation or threatens its solvency; (5) refusing to submit to examination under oath or to permit examination of the credit union's records and affairs by the commissioner or the commissioner's representative; (6) failing or refusing to authorize and direct another person to permit the commissioner or the commissioner's representative to examine the credit union's records in the other person's custody after the commissioner has requested the authorization of and direction to the other person; (7) conducting the credit union's business in an unsafe, unauthorized, or unlawful manner; (8) concealing, destroying, removing, or falsifying a record related to the credit union's business and affairs; (9) transacting business while the credit union was in an unsafe or unsound condition; (10) violating a condition of the credit union's articles of incorporation or of a written agreement with the commissioner or the commission; or (11) committing a criminal act that is a substantial detriment to the reputation and conduct of the credit union's business.

*Duty of Loyalty:* This is a general responsibility that prohibits directors from using their position of trust to further their personal interests above those of the credit union. It can include anything from respecting the confidentiality of information received to transacting their personal business with the credit union at arm's length. These duties are further reiterated by requirements within [Texas Fin. Code Section §122.061](#) which outlines that while serving as a director, honorary director, advisory director, committee member, officer, or employee of a credit union, a person may not: (1) participate, directly or indirectly, in the deliberation on or determination of a question affecting the person's pecuniary interest or the pecuniary interest of a member of the person's immediate family or of a partnership, association, or corporation, other than the credit union, in which the person is directly or indirectly interested; or (2) become employed by, engage in, or own an interest in

a business or professional activity that the person could reasonably expect to:

- (A) require or induce the person to disclose confidential information acquired because of the person's office or employment in the credit union; or
- (B) impair the person's independence or judgment in the performance of the person's duties or responsibilities to the credit union.

This does not mean directors may not conduct business with the credit union. However, directors must disclose any personal interest in matters before the board, and if necessary, abstain from the related discussion and vote.

*Duty of Candor or Disclosure:* The duty of candor or disclosure requires directors to provide full and open disclosure of all facts and circumstances which may impact the board's deliberations on matters under consideration. It can include disclosure of direct and indirect business and personal relationships with individuals seeking to do business with the institution as prospective members, borrowers, or vendors.

**Statutory and Regulatory Liability:** Credit unions are subject to a framework of state and federal statutes. For Texas state-chartered credit unions, relevant regulations include the TCUA, the insurance provisions of the NCUA Rules and Regulations or ASI coverage, and a host of consumer protection, anti-money laundering and other regulations from both federal and state authorities.

Because of the nature of credit unions, the information they hold on their memberships and the confidentiality of TCUD examinations, correspondence and administrative actions, directors must also keep information obtained as a result of their duties confidential. While not exhaustive of the federal and state laws requiring confidentiality by a board member the following is a list of the TCUD statutes with which they should be familiar.

[Section §122.061. CONFLICTS OF INTEREST.](#)

[Section §122.261. CONFIDENTIALITY.](#)

[Section §126.002. CONFIDENTIALITY OF INFORMATION.](#)

[Section §126.054. REPORT OF EXAMINATION.](#)

[Section §126.108. CONFIDENTIALITY; DISCLOSURE.](#)

Major regulations impacting credit unions including web site addresses can be found on the [TXCUD website](#).

Protection for directors against claims of negligence in performance of their duties can be afforded by the “business judgment rule” and appropriate indemnification insurance. The business judgment rule requires directors to act as prudent and diligent business persons when selecting, monitoring and evaluating management; when establishing business policies and procedures; when monitoring and assessing business operations; and when establishing and monitoring adherence to policies required by law, regulation, and principles of safety and soundness. The rule guards against claims of negligence in the performance of duties, even if their decisions were wrong, if the behavior/action was guided by the good faith, objective and disinterested business judgment of the directors. Appropriate levels of due diligence are required when investigating new products, services or investments, or before entering contractual relationships with third parties. This requires appropriate documentation to support conclusions by the directorate in performance of their duties. A certain amount of protection against individual director liability can be obtained through the purchase of indemnification and director and officer liability insurance. Directors should be familiar with any insurance provided by the credit union.

**What are the TCUA qualifications to serve on the board of directors?**

[Texas Fin. Code Section §122.054](#) outlines minimum qualifications for each director in that they may not serve if ever: (1) convicted of a criminal offense involving dishonesty or breach of trust; (2) not eligible for coverage under the blanket bond required by [Texas Fin. Code Section §122.063](#) and rules adopted under this subtitle; or (3) defaulted on payment of a voluntary obligation to the credit union or has otherwise

caused the credit union to incur a financial loss. Failing to meet these standards, even after original appointment to the board, would result in immediate lack of qualification and removal of the board member involved.

It is also important to note that the president or an employee of a credit union may not serve as director of the credit union unless expressly permitted by the credit union's bylaws. If the bylaws permit the president or an employee to serve on the board, the bylaws must require that the president and/or employees of the credit union never constitute a majority of the board.

Under the authority of the TCUA, the Credit Union Commission further expounded on board member qualifications through issuance of [Texas Administrative Code Section §91.501](#) which also excludes individuals who: (1) have had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation; (2) have a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or otherwise caused the credit union to suffer a financial loss; (3) have been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution; (4) have been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or have caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business; (5) have failed to complete and return a director application in accordance with subsection (c) of this section; or (6) refuses to take and subscribe to the prescribed oath or affirmation of office.

Directors must also develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union board must, by written policy, establish appropriate continuing education requirements

and provide sufficient resources for directors to achieve and maintain professional competence.

Finally, additional requirements for qualification as a board member may be found within the institution's specific bylaws provisions.

### **How long is a director's term and how often does the board meet?**

Terms of office are set under the standard bylaws but are generally three years. Under [Texas Fin. Code Section §122.053](#) a director's term cannot exceed three years. The board must meet at least monthly and they cannot vote by proxy. The board shall meet in person or by means of electronic communication devices that enable all participants in a meeting to effectively communicate with each other. The allowable methods of meetings are also outlined in the credit union's bylaws.

### **Is a director entitled to compensation?**

Credit union directors serve as volunteers. As outlined in the [Texas Fin. Code Section §122.062](#) an individual elected or appointed may not receive compensation for serving as a director, honorary director, advisory director, or committee member of a credit union, except that the person may be: (1) provided with reasonable health, life, accident, liability, or similar insurance protection; (2) reimbursed for necessary expenses incurred in the performance of the person's duties; and (3) paid the fees and reimbursed for other expenditures authorized by commission rules under [Texas Administrative Code Section §91.502](#).

### **Where can additional information be found about a credit union's board of directors?**

Specific responsibilities of the board are further prescribed by the TCUA, each credit union's bylaws, and TXCUD Rules, Informational Memorandums, and Letters. Each director should be familiar with these items which are available through your credit union and are also found on the TXCUD website at <https://cud.texas.gov/>. Regulations and agency pronouncements relating to share insurance requirements of the NCUA can be found at the NCUA website at [www.ncua.gov](http://www.ncua.gov). Contact information for TXCUD and the NCUA can also be found on those websites. Directors

should feel free to contact either regulator with specific questions and/or comments relating to the regulatory environment or the examination process.