



Policy Name: Director Liability Fiduciary Risk

Policy Owner: Chief Innovation Officer

Date Adopted: April 2024

Review Frequency: Annual

Review Date: April 2025

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1. Degree of Diligence

A Director should act in what is believed to be the best interest of the credit union.

A Director should act carefully and deliberately and examine possible consequences of a particular course of action. If a Director acts with care and in the scope of their powers, they will not be liable for errors in judgment. However, if a decision is made haphazardly and proves disastrous for the credit union, a Director may be held liable.

The duty of diligence as a Director requires that a Director keeps informed.

2. How to be Diligent and Protect Yourself

Attend Meetings

As a Director, it is important to attend meetings because it shows your interest in fulfilling your duties. A Director, whether present or not, is responsible for a decision of the Board. If you disagree with a Board decision, your dissent should be recorded in the minutes of the meeting. Only in this way can a Director be dissociated from a Board decision, although you may remain liable for the Board decision. A Board is not only responsible for the decisions it has made but may also be responsible for the decisions it has failed to make.

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Prepare for Meetings

A Director should have the agenda and any reports to be discussed at the meeting read beforehand. Directors are expected to make further enquiries if they are unsure of the contents. Directors are to review minutes of meetings whether they have attended or not (including committee meetings) for accuracy.

Act honestly and in good faith

If a Director acts in the best interest of the credit union and not for themselves, they will have fulfilled their fiduciary duty.

3. Degree of Skill

Directors are not required to be professionals with special skills. Their conduct is not expected to conform to a higher standard than may be expected of a reasonably prudent person in comparable circumstances. However, if a Director does possess a special degree of skill or knowledge (e.g. an accountant, realtor or lawyer), then a higher standard will be imposed, with respect to matters falling within that Director's area of expertise.

4. Director Liability

Directors and officers of a credit union in Canada are exposed to liability under both statute and common law. This liability may arise simply from their status as a director or officer, or it can result from negligent acts, errors, or omissions.

Directors or officers may be found personally liable in three areas:

- Fiduciary Liability – Acting in own self-interest or not acting honestly and in good faith and in the best interests of the corporation.
- Negligence: The duty to exercise the care, diligence, and skill of a reasonably prudent person in governing the credit union's affairs.
- Statutory Liability – Being involved in an offence committed by the credit union. This includes but is not limited to impairment of capital or corporate solvency; insider trading; inaccurate or incomplete disclosure; environmental legislation; employment standards including pensions and vacation pay; remittance liability including Goods and Services Tax and Provincial Sales Tax; Canada Pension Plan, employment Insurance premiums; and income taxes deducted at source, and all other applicable legislation

All Directors must annually complete and execute the Fiduciary Risk Policy Statement form Appendix

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A.

5. Directors' and Officers' Liability Insurance

The Directors' and Officers' (D&O) Liability policy has been developed to meet the needs of credit union directors and officers. In addition to the Directors' and Officers' Liability policy, protection for the Directors is included in other CUMIS coverage both directly and indirectly, including General Liability Bond, Corporate Errors and Omissions, Liability Employment Practices, Privacy Liability with respect to D&O coverage only and Legal Expense coverage.

Credit Union Officers and Directors are also entitled to cyber and privacy liability coverage through the existing cyber insurance policy.

6. Policy Approval

The Fusion Credit Union Board of Directors has reviewed and approved this Directors Liability Fiduciary Risk Policy on April 25, 2024.

7. Revisions History

March 2022:

- Housekeeping (Grammar, formatting)
- Appendix A: Removed requirement to review fiduciary statement with the board and have this recorded in the minutes based on the individual review and confirmation process managed by the Executive Assistant

April 2023:

- No recommended changes

April 2024:

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- Housekeeping Changes (Formatting, Grammar)
- Recommended Changes to Section 5: Director Liability Coverage based on feedback received from CUMIS. “Comprehensive” removed. Added commentary to reflect the privacy and cyber liability insurance coverage in place within the existing Cyber Insurance Policy.
- Removed name of policy owner

APPENDIX A- POLICY STATEMENT – DIRECTORS FIDUCIARY RISK

A fiduciary is a person who, because of the position he/she occupies, has the responsibility to act primarily for another’s benefit rather than for himself/herself. Fiduciary duty is a duty of fair management.

Therefore, Directors must ensure their actions/conduct in carrying out their duties reflects the spirit of the above noted at all times. When deemed necessary, the Board should seek legal advice.

Directors owe a duty of care to the credit union and its members. A breach of duty of care is equal to being negligent. The legal standard required to avoid negligence is to use the care that a reasonable person exercising sound judgment would make in a set of similar circumstances.

What is at stake is not just dollars and cents but confidence in the organization. As a Director, it is up to you to inspire that trust and confidence by diligently fulfilling your duties.

If a reasonable person exercising sound judgment would have acted as you did, you have not breached your duty of care. You are to use the skills and experience that you have.

Fiduciary duties may appear to be quite onerous, but if you act honestly and in good faith for the best interest of the credit union and not for yourself, you will have fulfilled your fiduciary duty.

This policy statement is to be reviewed with all new Directors, with a signed copy maintained. This policy statement must also be reviewed annually by all Directors.

Printed Name

Signature

Date