

# Board Governance? How You Can Become a Better Board

**Presented by**  
E. Andrew Keeney, Esq.  
Kaufman & Canoles

June 20, 2018



**KAUFMAN &  
CANOLES**  
attorneys at law



**E. Andrew Keeney, Esq.**  
Kaufman & Canoles, P.C.  
150 West Main Street, Suite 2100  
Norfolk, VA 23510  
(757) 624-3153  
[eakeeney@kaufcan.com](mailto:eakeeney@kaufcan.com)  
<http://www.kaufmanandcanoles.com/industries/credit-unions>



**KAUFMAN &  
CANOLES**  
attorneys at law



KAUFMAN &  
CANOLES  
attorneys at law



KAUFMAN &  
CANOLES  
attorneys at law

## Board Governance Overview

### Tricks/Traps/Treats

1. Strengths
2. Standards
3. Specifics
4. Quiz
5. CEO Relationships
6. Effective Board Operations
7. Mistakes to Avoid
8. New Environment
9. Fiduciary Duties
10. Special Board Resolution



## Board Governance Greatest Strengths of a Board

- Decision making/express opinions/participate in meetings
- Oversight
  - Set policy
  - Assure sound financial conditions
  - General direction
  - Establish and review CEO goals and objectives



## Board Governance General Standards of a Board

- Duty of loyalty
- Duty of care
- Standards of Conduct
  - Good faith
  - Reasonable belief
  - Best interests of credit union



KAUFMAN &  
CANOLES  
attorneys at law

## Board Governance General Liability Standards of a Board

- Standards of Liability
  - Lack of good faith
  - Unreasonable belief
  - Lack of information
  - Lack of objectivity
  - Statutory and Regulatory Liability

**Always put the interests of the credit union first!**



KAUFMAN &  
CANOLES  
attorneys at law

## Specific Board Responsibilities

- Hire, direct, and hold accountable its only employee, the President/CEO
- The Board may delegate operational functions to the management team but may not delegate responsibility for the Credit Union's direction
- Develop goals and objectives for the Credit Union, including strategic goals



## Specific Board Responsibilities (cont.)

- Review and approve policies at least annually and update as necessary
- Review bond coverage and insurance policies at least annually and update as necessary
- Review by-laws as necessary



## Specific Board Responsibilities (cont.)

- Make certain new products and services are developed as needed
- Approve the Credit Union budget
- Define the scope of the CEO's position and complete an annual CEO evaluation



11

KAUFMAN &  
CANOLES  
attorneys at law

## Board or Management?

(Which of these issues are Board level and which are management level?)

1. Deciding Where to Open the Next Branch
2. Reviewing and Approving the Overall Risk Policy
3. Determining Which Core Data Processor to Use
4. Discussing and Agreeing Upon the Key Strategic Priorities
5. Developing the Annual Strategic Plan



12

KAUFMAN &  
CANOLES  
attorneys at law

## Board or Management?

6. Approving the Annual Strategic Plan
7. Approving a New Staff Diversity Plan
8. Developing the Annual Budget
9. Discussing and Agreeing Upon a Merger Strategy
10. Deciding Whether to Remove Cash From Branches



13

KAUFMAN &  
CANOLES  
attorneys at law

## Governance

- Past
- Present
- Future Trends
- Nominating Committee



14

KAUFMAN &  
CANOLES  
attorneys at law

## Board Chair & CEO Relationship

- Communication
- Cooperation
- Completion
  
- 3 C's
  
- CUES Survey



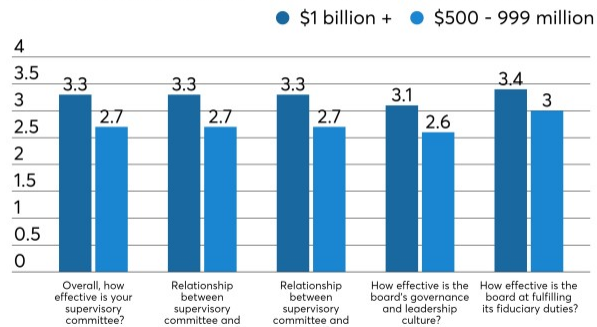
15

KAUFMAN &  
CANOLES  
attorneys at law

## Board Chair & CEO Relationship

### How boards and CEOs responded

A look at scores in the CUES survey by key asset sizes



Source: CUES



16

KAUFMAN &  
CANOLES  
attorneys at law



## Effective Board Operations

- Efficient Board Meetings
- Use of Committee/Task Force
- Decision Making Frame Work
- Performance Benchmarks



17

KAUFMAN &  
CANOLES  
attorneys at law

## Board Operations

- Board Meetings
  - Monthly
  - One regular meeting each calendar year – in person
  - Annual meeting
  - Audio or visual teleconference methods
  - Special meetings
  - Notice



18

KAUFMAN &  
CANOLES  
attorneys at law

## Board Operations (cont.)

- Robert's Rule of Order
- Terms of office
- Board documents and communication
  - Agenda
  - Encrypted
- Supervisory Committee



19

KAUFMAN &  
CANOLES  
attorneys at law

## Board Operations (cont.)

- Open and honest communication
  - Debate
  - Vote
- Code of conduct
- Ethics policy
- Compensation



20

KAUFMAN &  
CANOLES  
attorneys at law

## Ten Mistakes to Avoid

1. Failing to Understand Fiduciary Duties
2. Failing to Provide Effective Oversight
3. Indifference to Executive Committee, Board, or Director Emeritus
4. Micro-managing Staff
5. Avoiding Hard Questions



21

KAUFMAN &  
CANOLES  
attorneys at law

## Ten Mistakes to Avoid

6. Insufficient Conflict Management
7. Lack of Awareness or of Laws Governing Credit Unions
8. Operating with Outdated, Inconsistent Governing Documents
9. Communicating Disagreements Outside the Boardroom
10. Failure to Cultivate Board Diversity



22

KAUFMAN &  
CANOLES  
attorneys at law

## New Environment For Directors and Officers

- What's Happening Out There?
  - New regulations from various agencies
  - Increased risk of cyber breaches
  - Increased pressure to grow revenue
  - Increased work
  - Increased liability
  - No compensation
  - Risk/reward



23

KAUFMAN &  
CANOLES  
attorneys at law

## Fiduciary Duties 12 CFR 701.4

- General direction and control
  - Board is ultimately responsible
  - Delegation of execution? Yes.
  - Delegation of responsibility? No.
- Carry out duties
  - In good faith
  - Reasonably believe actions are in best interests of credit union
  - Use same care as “ordinary prudent person”
- Policies
  - <http://www.kaufmanandcanoles.com/news/articles/credit-union-legal-update-ncuas-list-of-required-policies-for-board-of-directors-of-credit-unions>



24

KAUFMAN &  
CANOLES  
attorneys at law

# Fiduciary Duty/Current Trends

- Performance evaluation to limit liability
- Proposed Resolution

[http://www.kaufmanandcanoles.com/downloads/pdf/articles/bod-indemnification-resolution\\_.pdf/view](http://www.kaufmanandcanoles.com/downloads/pdf/articles/bod-indemnification-resolution_.pdf/view)



25

**KAUFMAN &  
CANOLES**  
attorneys at law

### CERTIFICATION OF RESOLUTION OF BOARD OF DIRECTORS ADOPTING INDEMNIFICATION PROVISION

We, the undersigned, Chairperson and Secretary of \_\_\_\_\_ Federal Credit Union, Charter No. \_\_\_\_\_, hereby certify that by affirmative vote of two-thirds of the members of the board at a duly noticed and held meeting thereof on \_\_\_\_\_, 2018, the following resolution was adopted:

**BE IT RESOLVED:** That the following indemnification shall be approved and be effective immediately.

\_\_\_\_\_ Federal Credit Union shall, to the maximum extent permitted by state law, as amended, indemnify and allow payments or reimbursement for the reasonable expenses such as, but not limited to defense costs, insurance and bond deductibles and travel costs, of any person who was or is a party or threatened to be made a party to any legal proceeding, by reason of the fact that he or she is or was a director, officer, employee or agent of the credit union or volunteers services to the credit union; or is or was serving at the request of the credit union as a member of any committee or a director or officer of any other corporation or enterprise, except liability for:

- (A) receipt of a financial benefit to which he or she is not entitled;
- (B) an intentional infliction of harm on the corporation or its shareholders;
- (C) an intentional violation of criminal law.

Such right of indemnification shall transfer to the benefit of the estate and personal representative of such a person.

**BE IT FURTHER RESOLVED:** As of this date, the persons holding the position of President/CEO; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_ are the named officials of \_\_\_\_\_ Federal Credit Union.

The forgoing resolution, together with the names of Directors voting for and or against the resolution, and those absent from the meeting have been entered in full in the minutes of the Board of Director's meeting.

\_\_\_\_\_, Chairperson                                          \_\_\_\_\_, Secretary

Date \_\_\_\_\_

26



**KAUFMAN &  
CANOLES**  
attorneys at law

## Qualities of Awesome Board Members

- Prepared & Keeps Commitments
- Speak Their Minds
- Build Independent Relationships
- Resource Rich
- Strategically Engaged, Operationally Distant



27

KAUFMAN &  
CANOLES  
attorneys at law

## Board Governance Overview

### Tricks/Traps/Treats

1. Strengths
2. Standards
3. Specifics
4. Quiz
5. CEO Relationships
6. Effective Board Operations
7. Mistakes to Avoid
8. New Environment
9. Fiduciary Duties
10. Special Board Resolution



28

KAUFMAN &  
CANOLES  
attorneys at law



**E. Andrew Keeney, Esq.**  
Kaufman & Canoles, P.C.  
150 West Main Street, Suite 2100  
Norfolk, VA 23510  
(757) 624-3153  
[eakeeney@kaufcan.com](mailto:eakeeney@kaufcan.com)  
<http://www.kaufmanandcanoles.com/industries/credit-unions>



29



## **Board Governance? How You Can Become a Better Board**

**Presented by**  
E. Andrew Keeney, Esq.  
Kaufman & Canoles

June 20, 2018



30

