

## Safeguarding Credit Unions Amid Litigious Seas

By Charles Nerko & Brian Rich

**W**ith legal storms brewing ever more frequently, credit union members are increasingly setting sail on the turbulent waters of litigation. Some of these claims resemble perfect storms, with a single disgruntled member rallying a fleet of class-action litigants. While legal skirmishes are as inevitable as rogue waves, here we'll chart a course to help credit unions both avoid and weather these storms.

### **Prioritize Clear Communication**

If there's one lesson that keeps surfacing in credit union disputes, it's that communication – or the lack thereof – often sets the stage for conflict. Unclear communication casts members into a sea of misunderstandings. No one likes a surprise, especially when it comes to financial matters. Making sure that members are on the same page as the credit union minimizes the chances of litigation and ensures a smoother relationship.

### **Harness Common Sense as a Litigation Shield**

The best defense is often rooted in common sense. In practice, this entails steering toward fair and reasonable solutions for both the credit union and its members. Whether it's crafting an unconventional payment plan or refraining from extending additional credit to a risky member, using common sense can de-escalate conflicts before they evolve into bigger problems.



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### **Position Legal Counsel as the First Mate, Not the Captain**

When navigating the turbulent seas of credit union law, think of your legal counsel as your first mate, not your captain. A good first mate complements the captain's skills, but doesn't take the helm uninvited. Attorneys bring invaluable guidance, but their insights should augment broader business considerations and risk tolerance. In other words, lawyers should be "on tap, not on top" – aligned with your credit union's goals, not dictating them.

Select attorneys who reflect positively on the credit union when they become the face of your credit union in the courtroom. A lawyer who is overly antagonistic in communications with an adverse party can unnecessarily distract from a meritorious case, jeopardizing the credit union's best interests.



### **Fly the Right Flag to Dispel Industry Stereotypes**

Raise your own flag high – credit unions are not pirate ships but vessels of financial well-being. Yet in litigation, credit unions are often lumped together with the pirates of payday lending and other unsavory commercial lenders. Focus on what sets your credit union apart: Your not-for-profit structure, member ownership and consumer-service mission. When litigation arises, defend your practices based on their individual merit and your credit union’s mission, rather than becoming mired in unfavorable industry-wide connotations.

### **Cultivate Effective Communication**

Effective communication is not just polite – it’s good business. Credit unions that prioritize clear, transparent dialogue will find it easier to navigate the choppy waters of member relationships. After all, members who understand the terms of their relationship are less likely to dispute them later.

Clarity today prevents complications tomorrow. A homeowner who is unclear about how their payment breakdown is calculated may find little solace in a 50-page history of loan transactions. While thorough, these documents can create more confusion than clarity for members struggling to comprehend their financial obligations. Often, a direct conversation proves necessary to assure members that their concerns are heard and valued.

In some cases, members who initially seek legal recourse feel satisfied when they believe the credit union has genuinely listened to them – even if the

final resolution differs from their initial expectations. While there are valid scenarios where sharing documents or information indiscriminately is not advisable, proactively and clearly answering a member’s questions often pays dividends in the long run. This proactive approach is almost always preferable to having the credit union engage in the same “conversation” at a deposition or in front of a jury.

### **Maintain Professionalism and Humanity**

Plotting a straightforward course often yields the best results. There’s no need to transform loan transactions into Shakespearean dramas. Keep your communications concise, professional and free of jargon. Imagine every email or letter could one day be presented as Exhibit A in court.

In an era where digital communication often eclipses human interaction, Joy Peterson, CEO of Bessemer System Federal Credit Union (\$45.4 million, Greenville, Pa.), embraces a different ethos. Flanked daily by her canine confidante, Peterson shatters the commonly held stereotype that CEOs are inaccessible and detached. “The human connections I build with our members are invaluable. Contrary to the notion that CEOs are distant figures, my members find me genuinely approachable and relatable, further enhanced by the endearing company of my four-legged assistant,” Peterson explained.

### **Identify Underlying Member Concerns**

Like a skilled navigator who can discern water depths and hidden rocks, knowing what lies beneath the surface of a member’s concern can help you avoid trouble. Before you jump into problem-solving mode, first identify the member’s actual underlying concern. Is the member disputing a debt or just unable to pay? Tailoring your response to the actual issue at hand often dissolves disputes before they escalate. Additionally, periodic surveys can provide invaluable insights, allowing you to fix minor issues before they escalate into major ones.

### **Uphold Integrity**

When the course is unclear, integrity serves as your true north. Transparency, even when the

waters are murky, not only strengthens trust but can also be your guiding star when you find yourself in the crosshairs of a lawsuit. A lack of information fosters misunderstanding and suspicion. Providing a comprehensive, transparent answer to a member's inquiry can strengthen trust and reduce future disputes.

No one likes to admit fault. But when a mistake happens, owning it builds more credibility than a cover-up. Think of it as dropping an anchor before the ship veers too far off course. An honest

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approach is often rewarded by judges, juries and regulators, who prefer siding with credit unions that display integrity.

### **Embrace Technology for Member Satisfaction**

Leverage technology to improve your member experience. An intuitive mobile app or online portal not only simplifies transactions, but also makes it easier for members to understand terms, fees and other specifics. When members understand the terms of their relationship with the credit union, the likelihood of misunderstandings and disputes is reduced.

### **Strengthen Vendor Management and Accountability**

Maintain vigilant oversight of third-party vendors, as their problems can tarnish the credit union's reputation. Many members don't distinguish between the credit union and its vendors; they see a single ship, not the various hands that help sail it.

Even the largest core processors have hit the proverbial iceberg, suffering security breaches or

making computational errors that throw members' accounts off course. These vendor-caused problems expose credit unions to costly liabilities. To ensure smooth sailing, implement robust onboarding and due diligence protocols for evaluating potential vendors. Negotiate fair vendor contracts that incentivize the right behavior and provide appropriate compensation when a vendor steers the credit union into hazardous waters.

And should any vendor repeatedly fail to meet your standards, be prepared to cut them loose – much like a captain would jettison cargo that endangers the ship – to protect the credit union's course and integrity.

Keith Stone, CEO of The Finest Federal Credit Union (\$26.1 million, New York, N.Y.), adeptly turned a daunting vendor problem into an opportunity. Faced with steep early termination fees from a merging credit union's core processor, he didn't simply write a check. Instead, he rolled up his sleeves and delved into the cybersecurity record of the incumbent core processor. His diligence paid off. After uncovering cybersecurity problems, his credit union negotiated an exit from the core contract without any early termination fees – unlocking significant cost savings that paved the way for a successful merger.

### **Chart a Course for Smoother Sailing**

In an increasingly litigious world, your best compass is a mix of proactive communication, common sense and a legal team that knows when to advise and when to let you steer. Start plotting a course toward safer waters today. After all, as the saying goes, "An ounce of prevention is worth a pound of cure," especially when the cure can be as costly and stressful as litigation.

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