

Nearly 35% of all Management and Professional Liability claims over the last five years have been for Lender Liability.

Source: CUNA Mutual Group Internal Data



Lender Liability Exposures

Credit unions are still grappling with an increase in lawsuits filed by members over home foreclosures, vehicle repossessions, and a host of other lending activities. Nearly 35% of all Management and Professional Liability claims over the last five years have been for Lender Liability. These losses have exposed gaps in credit unions' internal controls, that go beyond the collections process to the entire lending process.

Follow the nine recommendations outlined in this handout to help close the gaps at your credit union. While the recommendations are a good starting point, they won't eliminate the risk of lending-related lawsuits. However, they can make a significant difference in whether lawsuits go to trial.

Common Reasons for Lender Liability Lawsuits

- UDAAP Violations
- Negligence
- Violation of Fair Debt Collections Practices Act
- Breach of Contract
- Wrongful vehicle repossession
- Violation of Automatic Stay
- Improper Credit Reporting
- Non-compliant post-repossession letters
- Wrongful foreclosure on a home
- Failing to honor lending commitments
- Improper use of loan covenants
- Exercising too much control over a borrower's operations
- Violation of the TCPA

Lender Liability Progression





1 Create clear, written lending and collection procedures

If your lending and collections processes aren't carefully documented—or if the documentation hasn't been updated in years—your directors and leadership team should work together to put these processes in writing. Test the procedure descriptions with your staff to be sure they're comprehensive and understandable.

2 Review post-repossession notices with legal counsel to ensure compliance

There has been a resurgence of claims related to non-compliance of post-repossession letters. Uniform Commercial Code (UCC) Article 9 has specific requirements on what needs to be disclosed in these notices, and some state laws impose additional requirements. Quite often, credit union notices are found to contain defects.

Non-compliant collection letters can open your credit union to class action lawsuits as well as individual lawsuits. In addition, potential damages and awards can reach millions of dollars depending on the number of defective notices sent by the credit union over time. Common damages may include the return of 10% of amount financed, all the interest, any deficiency payments, and waiving any remaining balances. These types of damages are generally not insurable. [Minimize collection letter risks](#).

3 Require clean, well-documented loan files

Your lending staff must be aware that anything in a loan file can be evidence in court. Careless or casual comments scribbled in the margins can create problems. Verbal commitments can often impact a lending liability suit, so document significant conversations in the loan file.

4 Be cautious in discussion with business owners

Enforcement of Affirmative and Negative Loan Covenants is a critical component of commercial loan administration; however, there is a fine line between protecting your credit union and micro-managing a member's business operations. Lenders are cautioned not to say anything that can be construed as a verbal commitment to extend additional credit or modify repayment terms, unless a formal underwriting decision has been made.

5 Require impartial parties to decide the fate of a loan

It's not uncommon for lending personnel to feel that they have a personal or vested interest in the success of a business. Personnel involved in the approval process or employees working extensively with the member can make a poor decision for personal reasons. An executive committee, or at least someone other than the loan officer who approved the loan, should decide the loan's fate. Post-closing quality control reviews should be conducted by an employee not involved in granting or collecting loans.

6 Communicate early and often when delinquencies arise

Clear messages and regular contact demonstrate good faith and pave the way to amicable resolutions of delinquent loans. Never surprise a member with sudden and forceful actions.

Lender Liability - Close the Gaps at Your Credit Union

7 Carefully monitor bankruptcy proceedings

When a debt is discharged through bankruptcy, the debtor's personal liability on the loan ends. Any attempt to collect this debt from the debtor would violate the discharge injunction under the U.S. Bankruptcy Code.

8 Train your staff and establish regular audits

An established credit administration program alone is not enough. Be sure to require staff training. In addition to training for new employees, staff should get refresher training at least annually. Conduct regular loan reviews, based on the defined risk in the relationship, and ensure adequate reporting to executive management and the board of directors.

9 Review your risk exposure and coverage

CUNA Mutual Group's Risk & Compliance Solutions team can help you evaluate your lending operations and share best practices and risk mitigation tips for successful loan administration. Work with your assigned sales team for coverage-related questions.

Proper documentation can assist in defending a Lender Liability lawsuit.

Consider documenting:

- All communications with borrowers
- Reasoning for internal decisions
- Approval terms and approval authority
- All collection efforts



Insightful knowledge, experience, and resources when you need it most.

Contact CUNA Mutual Group's Risk & Protection Response Center
at **800.637.2676** or by email at riskconsultant@cunamutual.com for additional insights.

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