

**REGULAR STATE CREDIT UNION BOARD MEETING  
HELD BY CONFERENCE CALL  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**September 27, 2002**

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:30 a.m., Friday, September 27, 2002, by conference call arrangement.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)  
Charles W. Gates, Member (*Grand Forks*)  
Judy A. Millar, Member (*West Fargo*)  
Ervin E. Mund, Member (*Office*)  
Steven S. Tonneson, Member (*Minot*)

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)  
Jim Laidlaw, Chief Examiner – Credit Unions (*Office*)  
Kermit Larson, North Dakota Credit Union League (*Office*)

**MINUTES PREVIOUSLY APPROVED BY MAIL**

The minutes for the regular meeting of June 7, 2002, and the special meetings held July 19, 2002, and July 31, 2002, had been previously mailed to the Board, and approved.

## **NORTH STAR COMMUNITY CREDIT UNION, MADDOCK**

Chairman Karsky indicated although the merger application, branch application, and expansion of field membership application were on the agenda for approval for the North Star Community Credit Union, Maddock, to merge with Cavalier Credit Union, Cavalier, the comment period does not end until October 6, 2002; therefore it will be considered at a special meeting scheduled for October 9, 2002.

## **ARTICLES OF AMENDMENT TO THE BYLAWS – ST. ALEXIUS MEDICAL CENTER CREDIT UNION, BISMARCK**

Assistant Commissioner Entringer explained that the amendment presented to amend Article VIII, Section 4, Board of Directors, which states that the Board will have the general direction and control of the affairs of the credit union. The amendment adds to Subsection L of Section 4, Article VIII, and provides that a director, committee member, or officer of the credit union may be removed from any elected or appointed office by the affirmative vote of two-thirds of the Board present at a special meeting called for that purpose, but only after an opportunity has been given for him/her to be heard.

Member Mund indicated the purpose of this amendment is to be able to remove any elected officer who is serving on a committee. For example, if Member Mund were on the North Dakota Credit Union League Board, he would not be able to continue to serve on the Board.

Chairman Karsky indicated this exact situation had happened in the past where the chief executive officer of a credit union had been terminated, but was serving on some North Dakota Credit Union League committees or boards, and this could have presented a problem.

Member Tonneson asked for clarification as to whether this amendment allows the Board of Directors to remove that person from external committees and boards, not within the credit union, as those provisions are already within the bylaws. Member Mund confirmed that is correct.

Member Mund declared a conflict of interest, since he is currently President of St. Alexius Medical Center Credit Union.

**It was moved by Member Millar, seconded by Member Gates, and unanimously carried, to approve the Articles of Amendment to the Bylaws, Article VIII, Section 4, Board of Directors, of St. Alexius Medical Center Credit Union, Bismarck.**

## **FINAL APPROVAL OF THE PROPOSED REVISIONS TO NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 13-03-02**

Chairman Karsky indicated the only comments received after the hearing held on July 12, 2002, were from Marilyn Foss, General Counsel of the North Dakota Bankers Association. Chairman Karsky did note that during the comment period before the hearing the Department received comment from Town and Country Credit Union, Minot.

Assistant Commissioner Entringer read both comments for the record at this time. In paragraph 2 of the letter from Ms. Foss it states “at the outset, it should be noted that principles of safety and soundness are not different when the lender is a credit union rather than a bank. From the perspective of a regulator, the rules for real estate loans should be the same, irrespective of the business structure of the lender. Regulations should also be substantively clear so that regulators and credit unions can, themselves, determine what is required from reading the regulation, rather than ‘interpreting’ it. It seems to us that there are proposed changes to NDAC, Chapter 13-03-02, that are inconsistent with these concepts. An example of this is found in proposed NDAC Section 13-03-02-02(2). There the proposed changes require the credit union to verify ownership and lien priority, but give no guidance as to acceptable methods for doing so. Undoubtedly, the proposal is intended to make the process flexible. However, it appears that the rule may also encourage unsafe and unsound practices and give the credit unions a basis for defending against enforcement on the ground that they are following the literal terms of a credit union board rule.”

Chairman Karsky indicated he felt what Ms. Foss is saying is that the State Credit Union Board is not saying how the credit union should verify ownership as well as priority of the lien. Chairman Karsky indicated he felt the intent was to be flexible for the credit union to order a title opinion, get title insurance, or just request a letter from the abstractor, which of course does not provide any insurance or bond coverage, or another option is to go to the courthouse yourself and search the records and document the files.

Chairman Karsky stated he felt what the North Dakota Bankers Association is saying is that the Board is not giving direction as to how this is to be accomplished, and we are allowing flexibility but yet want to make sure that it gets done in whatever fashion the credit union chooses.

Member Tonneson agreed that as long as there is no abuse the credit union should be allowed to have the flexibility to do it in whatever manner it chooses, as long as it gets done. Member Tonneson indicated in his credit union they have a variety of ways in which they accomplish the priority of the lien, as well as verifying the mortgage, or depending on the situation, and for the Board to specify how it is to be done he felt would be overkill.

Chief Examiner Laidlaw indicated he was fine with the wording and that if the Department has a problem with it, we will deal with it during the examination process.

Member Gates indicated the words “must verify” means that the credit union has to do it.

Assistant Commissioner Entringer continued with paragraph 4 of Ms. Foss’ letter which states, “We also believe proposed new NDAC 13-03-02-02(3) can be improved, especially in light of the dramatic increase in the size of loans where the real estate valuation may be via acceptance of a county tax statement, rather than a valuation by a loan officer or committee. As a matter of reality, tax valuations may be higher or lower than appraised value or actual value. Accordingly, we would recommend that the loan officer who is accepting the tax statement as being accurate include within the loan files the reasons for that acceptance, as well as the “indication” of that acceptance.”

Assistant Commissioner Entringer indicated it was his recollection when the Board first considered this provision that was exactly what was discussed, that there had to be some notation on the county tax statement, if that is what they were using; that the loan officer of the committee agreed with that valuation as being appropriate. Chairman Karsky indicated he also felt the key thing is that the first sentence indicates for real estate loans that exceed \$100,000, a written appraisal must be obtained by the credit union’s designated appraiser. Therefore, the credit union is going to have a written appraisal on anything over \$100,000.

Chairman Karsky also stated the primary reason for this amendment was for the home equity lending area, as well as for those credit unions that operate in small communities where a home may only cost \$30,000-\$40,000 and the customer is coming in with an approximate \$10,000 down payment for a first real estate mortgage. In those instances, Chairman Karsky stated he did not feel it was cost effective for the credit union to have to order a \$300 or \$400 appraisal on a \$20,000 or \$30,000 mortgage. Additionally, the new language in the Section is that the designated appraisal must be independent of the transaction, which means it could be another loan officer but the loan officer making the loan cannot conduct the appraisal.

Chairman Karsky continued that even though the proposed Section states that the county's annual tax statement is acceptable for an evaluation, it does not mean it is the only method that can be utilized.

Member Tonneson clarified that the independence means that it cannot be the loan officer making the loan, and that he feels when this is sent out to the credit unions that should be clarified in the cover memorandum.

Assistant Commissioner Entringer continued with the final paragraph, which states "The proposed changes to NDAC Section 13-03-02-03 increased the general loan-to-value limit for a loan which is secured by real estate to 90% from 80% and remove all reference to unamortized loans secured by real estate. Rules adopted by the State Banking Board for state-chartered banks established different loan-to-value limits for real estate loans, based upon the status of the property as improved or unimproved and permit exceptions where there are positive exigent circumstances (and security) to support the exception. We urge the State Credit Union Board to consider the approach of the state bank rules for real estate loans, as a substitute for the "one size fits all" idea of proposed NDAC 13-01-02-03(1)."

Chairman Karsky stated when reading the amendment to that Section the only thing that was changed was from 80% to 90%. He added when you read the comment letter from Town and Country Credit Union, Minot, it wanted to see a higher limit because there are banks that are doing 125% loan-to-value loans. The Department did not feel 125% is a prudent limit, but that 90% would be acceptable. Chairman Karsky added that does not mean all credit unions will go up to 90% since their internal policies may have lower limitations for specific types of loans. This rule simply states you cannot exceed 90%.

Member Tonneson agreed you have to base it on your marketplace and in some cases it may not be realistic to go to 90% of appraised value. He felt you could deal with a specific situation if there is abuse or poor judgment on the part of a particular loan officer or credit union, and deal with it through the examination process. Chairman Karsky agreed if the examiners found that a credit union was having problems in this area, this would be handled administratively and require changes to policies, on a case-by-case basis.

Chairman Karsky explained that the process which began April 19, 2002, continues with the next step of sending the amendment to the Attorney General's Office for approval, and then on to the Legislative Council for final printing. Once the amendment is printed and mailed out, it becomes effective.

**It was moved by Member Mund, seconded by Member Tonneson, and unanimously approved for final approval of the amendments to Chapter 13-03-02 of the North Dakota Administrative Code.**

The Board went into closed session at 10:05 a.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary