

January 9, 2009

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Re: Removal of Director.

Dear XXXXX:

You have asked if your removal from your Federal Credit Union's (FCU) board of directors was appropriate. No, removal of a sitting director requires a membership vote at a special meeting held for that purpose. A director's seat may be declared vacant by the board, but only if a director fails to attend regular board meetings or otherwise fails to perform his or her duties as a director.

In your letter, you indicated you were duly elected to the board in 2003 and have been twice re-elected to office. Recently, your director's seat was declared vacant at a special meeting of the board of directors based on allegations that included disruptive activities, breach of board confidentiality, divisive behavior, and breach of fiduciary duty. You also state you requested that a member of the supervisory committee attend the meeting, but the board chair denied this request. In support of the board's action, the credit union's general counsel relied on Article XVI, Section 3 of the FCU Bylaws.

While Article XVI, Section 3 of the FCU Bylaws allows for the removal of a director, the provision requires "[t]he affirmative vote of a majority of the members present at a special meeting called for the purpose" Under this provision a vote at a special meeting of the members, not the board of directors, is required. The director must also be given the opportunity to be heard.

Article VI, Section 8 of the FCU Bylaws allows a board of directors to declare a seat vacant. A director may only be removed under this provision, however, if the director fails to attend regular meetings of the board (for 3 consecutive months, or 4 meetings within a calendar year), or otherwise fails to perform any of the duties as a director. Voting in the minority, abstaining, or disagreeing with or opposing the views of other board members do not constitute a failure to

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perform the duties as a director. NCUA encourages a full, healthy, and robust debate among FCU boards of directors.

The circumstances described in your letter appear to reflect disagreements among board members, rather than a failure to perform your duties as a director. A board of directors cannot use the vacancy provision to circumvent the rights of the members to vote on a director's removal. If members of a board of directors believe a fellow director is acting inappropriately, they may bring the issue to the supervisory committee. It is the supervisory committee that has the authority to vote to suspend a director. The supervisory committee vote must be unanimous and the effect is to suspend the director until a special meeting of the members is called; the supervisory committee must call a special meeting of the members to act on the suspension. FCU Bylaws, Article IX, §5. The special meeting must be held no fewer than 7 days and no more than 14 days after the director's suspension. Id.

Absent an affirmative membership vote at a special meeting, a director cannot be removed from membership on the board of directors. Given the nature of the allegations you described were brought against you, our view is the board of directors did not have permissible grounds for the board to declare your seat vacant.

You also asked if minutes must be kept of executive committee meetings. Yes, it is the duty of the director who serves as secretary for the board of directors to prepare and maintain a record of all meetings of members and directors. FCU Bylaws, Article VII, §9. Because directors make up the executive committee, FCU Bylaws, Article VII, §10, minutes must be kept of all meetings of the executive committee. Also, as a director, all credit union records must be available to you provided you have a proper purpose for obtaining the records. FCU Bylaws, Article XVI, §6.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/PWY:bhs
08-1229 Redacted

cc: Director, NCUA Region XXXXX
XXXXX, Chairman
XXXXX Federal Credit Union