



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS**

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Interpretive Letter

Division of Credit Unions Interpretive Letter I-14-03

DATE: May 20, 2014
TO: Washington State Credit Unions
FROM: Linda Jekel, Director
Division of Credit Unions
RE: Referring to a Board of Directors as a “Board of Trustees”

Issue

May the board of directors (“Board”) of a Washington State-chartered credit union under the Washington Credit Union Act, chapter 31.12 RCW (“state credit union”) be referred to officially by the state credit union as a “board of trustees” and, in turn, may individual members of such Board be referred to as “trustees” instead of “directors”?

Short Answer

Yes. It is permissible for a state credit union to officially refer to a “board of directors” and “directors” as “board of trustees” and “trustees” instead. However, such official use must be properly memorialized in an appropriate governing document of the state credit union. It is not necessary for the state credit union to amend its articles of incorporation.¹ Rather, the

¹ An amendment to the articles of incorporation would necessarily require the approval of the Director of Credit Unions. See RCW 31.12.105. Since the official act contemplated here is merely to alter the names by which a “board of directors” and “directors,” respectively, are to be called, there is no change taking place in the actual powers and duties of either, or in the limitation of liability and indemnification set forth in the articles of incorporation of the state credit union, as authorized by RCW 31.12.055(1)(g) and (h). Nothing in this Interpretive Statement precludes a state credit union from electing the option of amending its articles of incorporation; provided that if a state credit union elects to do so, it must accordingly seek the approval of the Director of Credit Unions. In addition, the amendment to the articles of incorporation should create no confusion that the “board of trustees” and “trustees” constitute the Board and the Board’s members and that there are no changes in the limitation of liability and indemnification of the Board and the Board’s members (if any) as authorized by RCW 31.12.055(1)(g) and (h). Any such optional, proposed amendment to the articles of incorporation should be reviewed by the state credit union’s legal counsel.

memorialization may be undertaken by the Board alone by way of amendment to the bylaws.² As a best practice, the state credit union should amend its bylaws to recite that the official use of the terms “board of trustees” and “trustees” does not alter their duties and rights. They have the same obligations, privileges and immunities, limitation of liability, or indemnification, if any, of the Board or the Board’s members by reason of being called a “board of trustees and “trustees” in lieu of the terms “board of directors” and “directors.” A state credit union, which elects to undertake the official act of calling its Board and the Board’s members a “board of trustees and “trustees,” respectively, should have the language of any such amendment to its bylaws reviewed by its legal counsel prior to adoption.

Analysis

The Credit Union Act uses the term “board” to refer to a board of directors of a state credit union³ and employs the term “directors” over fifty (50) times in reference to members of a Board. However, there is no language in the Credit Union Act that prohibits the official use of the terms “board of trustees” or “trustees” in reference to and in place of the terms “board of directors” or “directors.”⁴

A board of directors of any corporation is a group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated in the articles of incorporation or bylaws.⁵ Generally, the term “board of trustees” refers to the equivalent of a board of directors in relation to a *non-profit* corporation.⁶ In addition, the governing management body of a *mutual* corporation has often been referred to as a “board of trustees” instead of a “board of directors,” as in the historical case of some mutual savings banks and mutual insurance companies.

A state credit union is a *species* of corporation deriving its authority solely from the Credit Union Act. Designating the governing management body of the state credit union as a “board of trustees” rather than a “board of directors” confers upon the Board and its members no greater or lesser powers, duties, privileges, immunities, or limitations of liability than are authorized for a board of directors by the Credit Union Act. This should be set forth in the articles of incorporation and bylaws, and be consistent with the Credit Union Act.

² RCW 31.12.115(2).

³ RCW 31.12.005(1).

⁴ Indeed, RCW 31.12.055(1)(i) and 31.12.065(1)(m), governing the contents of articles of incorporation and bylaws of a state credit union, respectively, allow for other unspecified “provision[s] which [are] not inconsistent with the [Credit Union Act].”

⁵ Garner, Bryan A., *Black’s Law Dictionary, Standard Ninth Edition* (West Publishing Co., 2009); See also, for example, definitions of “board of directors” under the Washington Nonprofit Corporation Act, at RCW 24.03.005(7), and the Washington Nonprofit Miscellaneous and Mutual Corporation Act, at RCW 24.06.005(10).

⁶ *Black’s Law Dictionary Free Online Legal Dictionary 2nd Ed.*, <http://thelawdictionary.org/board-of-trustees/>.

On a general advisory note, however, it is important to point out the similarities and differences between directors and trustees as a matter of law.

“ . . . [D]irectors . . . are not ‘trustees’ in the strict sense of the term. For example, a corporate director is not regarded as a trustee of an express trust. However, where directors of a corporation enrich themselves by wrongful acts of commission to the injury of the corporation, they may be treated as though they were in fact trustees of an express and subsisting trust . . . especially where insolvency of the corporation is the result of their wrongdoing. . . .”⁷

Therefore, the Director of Credit Unions expects the bylaw amendment to contain language for the following:

- 1) to officially designate the Board and the Board’s members as the “board of trustees” and “trustees”;
- 2) to clarify that the Board is the “board of directors” authorized under the articles of incorporation and that the “trustees” are the authorized individual members of the Board; and
- 3) to be clear that no greater or less powers, duties, privileges, immunities, limitation of liability, or indemnity are being conferred by such official denomination other than as set forth in the articles of incorporation and the bylaws.

Conclusion

The Division of Credit Unions does not provide legal advice. This Interpretive Statement is applicable to all state-chartered credit unions similarly situated, is provided as general guidance only, and is not a substitute for legal advice given to a credit union.

If you have any questions, please contact Linda K. Jekel, Director of Credit Unions, at linda.jekel@dfi.wa.gov, or (360) 902-8778.

⁷ *Fletcher’s Cyclopedia of Corporations, Volume 3*, § 838; see also *Senn v. Northwest Underwriters, Inc.*, 74 Wash.App. 408 (1994).