

Article 14K.

Change in Corporate Status.

§ 54-109.92. Suspension and conservation.

(a) The Administrator of Credit Unions may determine in the performance of his duties under this Subchapter that a credit union is insolvent or in imminent danger of insolvency, or that an officer, director, or employee of a credit union, or the credit union itself, acting by and through an officer, director, or employee, has:

- (1) Affected or is likely to affect the safety or soundness of the credit union by a violation of:
 - a. This Subchapter,
 - b. A rule adopted under this Subchapter, or
 - c. Any federal law or regulation applicable to credit unions;
- (2) Violated, neglected, or refused to comply with a duly issued final order of the Administrator of Credit Unions or the Credit Union Commission;
- (3) Refused to submit to examination under oath, or to permit examination of the credit union's books, papers, records, accounts, and affairs by the Administrator of Credit Unions or his duly authorized representative;
- (4) Failed or refused to authorize and direct any other person to permit the inspection and examination of the credit union's books, papers, records, or accounts in the other person's care, possession, custody, or control by the Administrator of Credit Unions or a duly authorized representative of the Administrator, after the Administrator has requested the granting of that authority and direction to the other person; or
- (5) Affected or is likely to affect the safety or soundness of the credit union by conducting the credit union's business in an unauthorized or unlawful manner.

(b) If the Administrator of Credit Unions makes any of these findings, he may issue an order temporarily suspending the credit union's operations for not more than 90 days or, if the Administrator determines that the findings are of such severity that immediate affirmative action is needed to prevent further dissipation of the assets of the credit union, the Administrator may immediately issue an order of conservation and appoint a conservator to manage the affairs of the credit union. Service of the order of suspension or the order of conservation must be by certified or registered mail, addressed to the credit union at the last known address of its principal office, or by delivery to an officer or director of the credit union. Service by mail is complete upon the deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. The order must clearly state the grounds for suspension or conservation.

(c) After a conservation order has been served on the credit union, the Administrator of Credit Unions shall take possession and control of the books, records, property, assets, and business of the credit union. Upon the service of the suspension order, the credit union shall cease all operations, except those authorized by the Administrator and conducted under his supervision. Not later than 15 days after the date an order of suspension or conservation is served, the board of directors shall file a written reply to the order. They may file a written request for a hearing to present to the Administrator a plan to continue operations under the control of the board of directors setting out proposed corrective actions. Under an order of suspension, the board of directors may request that a conservator be appointed for the credit union or that the credit union be closed or merged or that a liquidating agent be appointed, and

may waive rights to further appeal. In that event, the Administrator may immediately appoint a conservator, or order that the credit union be liquidated and appoint a liquidating agent. Under an order of conservation, the board of directors may consent to the conservatorship and waive rights to further appeals.

(d) If the board of directors files its reply and requests a hearing as provided by subsection (c), the Administrator of Credit Unions shall set and hold the hearing not less than 10 nor more than 30 days after the date of receipt of such a request. Not later than 10 days before the hearing, the Administrator shall give notice to the credit union of the date, time, and place of the hearing. Not later than 10 days after the earlier of the date of conclusion of the hearing or the date on which the suspension expires, the Administrator shall (i) adopt the plan to continue operations under the control of the board of directors presented by the credit union, (ii) agree with the credit union on an alternative plan to continue operations under the control of the board of directors or other appropriate measures, (iii) reject the plan to continue operations under the control of the board of directors and issue an order of conservation appointing a conservator, (iv) continue a previous order of conservation, or (v) issue an order of liquidation ordering that the credit union be closed, ordering that its affairs and business be liquidated, and appointing a liquidating agent.

(e) If the Administrator of Credit Unions rejects the credit union's plan to continue operations and determines that it is in the public interest and in the best interest of the members, depositors, and creditors of the credit union to rehabilitate the credit union, he may permit the credit union to operate under his direction and control, and shall issue an order of conservation appointing a conservator to manage the affairs of the credit union. The Administrator shall serve the order of conservation in the same manner as provided for service of an order of suspension.

(f) The conservator, on behalf and under the supervision and direction of the Administrator of Credit Unions, shall take charge of the books, records, property, assets, and business of the credit union and shall conduct the business and affairs of the credit union under the direction and supervision of the Administrator. The conservator shall take steps toward the removal of the causes and conditions that have necessitated the order that the Administrator directs. During the conservatorship, the conservator shall make reports to the Administrator from time to time as the Administrator requires. The conservator shall take all necessary measures to preserve, protect, and recover the assets or property of the credit union, including claims or causes of action belonging to or that may be asserted by the credit union. In addition, the conservator may deal with that property in his own name as conservator and may file, prosecute, or defend against a suit by or against the credit union if the conservator considers this action necessary to protect the interested parties or property affected by the suit.

(g) The Administrator of Credit Unions shall determine the cost incident to the conservatorship. The cost is a charge against the assets and funds of the credit union, and shall be paid as the Administrator directs.

(h) A suit filed against a credit union or its conservator while a conservatorship order is in effect must be brought in a court of proper jurisdiction in Wake County. The conservator may file suit in a court of proper jurisdiction in Wake County against any person for the purpose of preserving, protecting, or recovering assets or property of the credit union, including a claim or cause of action belonging to or that may be asserted by the credit union.

(i) The conservator shall serve for the period necessary to accomplish the purposes of conservatorship consistent with the intent of this section. If the credit union is rehabilitated, it shall be returned to the management of the board of directors under the terms that are reasonable and necessary to prevent recurrence of the conditions that occasioned the conservatorship.

(j) If the Administrator of Credit Unions determines that the credit union in conservatorship is not in a condition to continue business and cannot be rehabilitated as provided by this section, he shall issue, as he deems appropriate, either an order of merger or an order of liquidation, appointing a liquidating agent.

(k) If, after a hearing under this section, the board of directors of the credit union is dissatisfied with the decision of the Administrator of Credit Unions, the board may appeal to the Credit Union Commission by filing with the Administrator a written appeal, including a duly certified resolution of the board, not later than 10 days after the day that the Administrator's order is served. If the appeal is duly filed, the Administrator shall set a date for a hearing on the appeal not more than 30 days after the date on which the appeal is filed. The Administrator shall promptly give notice of the date, time, and place of the hearing to the credit union and any other interested party. The filing of an appeal does not suspend the effect of the order of the conservation and this order remains in force pending final disposition of the appeal by the Commission. At the conclusion of the hearing, the Commission may reverse the order of the Administrator and adopt and approve the credit union's plan to continue operations, affirm the Administrator's order of conservation, or order that other appropriate action be taken.

(l) If the board of directors of the credit union does not file a reply to the order of suspension or an order of conservation as required by this section or fails to request and appear at the hearing provided for by this section, the Administrator of Credit Unions may dispose of the matter as he considers appropriate. The credit union is presumed to have consented to the action and may not contest it.

(m) The period of suspension and the date and time of the hearings provided for by this section may be extended by agreement of the parties and the Administrator of Credit Unions.

(n) The Administrator of Credit Unions shall notify the members of the Credit Union Commission of any suspension. (1975, c. 538, s. 1; 1977, c. 559, s. 9; 1989, c. 72.)