

BULLETIN
NHBDL 2012-001

Issued By: New Hampshire Banking Department
Ronald A. Wilbur, Bank Commissioner

Date: November 27, 2012

Re: **Guidance on Executive Meeting Minutes**

This bulletin is intended to provide guidance on whether a bank or credit union is required to keep minutes during an executive session of a board meeting.

Discussion

RSA 384:7 requires minutes of meetings to be kept. It applies to credit unions as well as banks. RSA 293-A:16.01 requires New Hampshire corporations to keep minutes of meetings. The NHBD interprets these provisions to mean that minutes of the entire meeting must be kept, regardless of whether in executive session or not. The executive session minutes can be kept confidential and separate from the other meeting minutes, but must at least identify the persons attending the meeting, the general topics discussed at the meeting, and any votes taken or decisions made.

Taking minutes during executive session also constitutes a "best practice" for corporate governance and lowers the risk of a successful challenge to the managerial process. Courts have consistently chastised corporations for failure to take and maintain comprehensive minutes and have noted that failure to keep minutes tends to prolong litigation. The Federal Reserve Bank of Kansas City has published a handbook entitled Basics for Bank Directors (Forest E. Myers, author. 3d Ed., 2001), which states in part, "...board minutes...as well as committee minutes, are important. Review them before approving them. This review may pay you dividends later if the bank encounters problems and the board's diligence is questioned. Otherwise, the record won't be there when you need it most. As one examiner put it, "if it's not in the minutes, it didn't happen." (Pg. 55)

Conclusion

Recording minutes of meetings, even executive sessions, is a best business practice, and is also required by New Hampshire banking statutes. Therefore, the NHBD requires its institutions to maintain such minutes. Failure to do so will be noted during examination and may result in corrective action.