

July 11, 1991

Donald J. MacKinnon
Pope Federal Credit Union
P.O. Box 35169
Fayetteville, NC 28303

Re: Statutory Liens & Joint Share Accounts (Your June 14, 1991, Letter)

Dear Mr. MacKinnon:

You have asked us to comment on an article in the Credit Union Attorney Law Letter (May 1991) which seems to contradict a statement in the NCUA News that "[a] joint share account cannot be impressed by statutory lien to cover one member's defaulted loan without the express consent of the non-depositor, joint account holder."

The statement in the NCUA News is a synopsis of a NCUA legal opinion which was limited to a fact pattern covered under Florida common law and as such is correct only as far as it concerns federal credit unions located in Florida (see attached). The article concerns credit unions located in Massachusetts which are covered under Massachusetts common law. Under Florida law, neither spouse can, without the consent of the other, encumber property held by the entireties. The joint account held in the entireties, therefore, cannot be attached by a statutory lien, without the prior permission of the non-debtor account holder. It appears from the article that Massachusetts common law allows the pledging of a joint account without the permission of the non-debtor spouse account holder and therefore the Massachusetts court concluded, under these facts, that the credit union had an equitable security interest in a portion of the joint account. In summary, the use of the statutory lien on joint accounts may vary depending on state property law.

Sincerely,

James J. Engel
Deputy General Counsel

Attachment