



# FREQUENTLY ASKED QUESTIONS

## Frequently Asked Questions (FAQs) Applicable to all Licensees

### General Questions

**1. Q My company is a subsidiary of a publicly traded company. Are we exempt from the disclosure requirements for our principals?**

A No. The only time a licensee would be exempt is if the *applicant itself* is a publicly traded company.

**2. Q What is the procedure for filing a request for change in ownership of company?**

A Provide the following:

- A cover letter detailing the change.
- Schedule A showing the current principals and direct owners of the company (if one is not already on file with the department).
- Schedule B showing the current indirect owners (if one is not already on file with the department).
- Schedule C showing the changes being made as a result of the amendment (additions, deletions, changes in position).
- Form MU2 (mortgage companies) or the NH Individual Disclosure Form (all other licensees) for any new persons being added who are required to file per the instructions in the schedules.
- A Criminal Record Authorization, fee and fingerprint card for each individual required to file.
- A copy of any amendments were filed to the company's articles of incorporation, articles of organization, by-laws or management or partnership agreements.
- If there is an associated name change, follow the instructions below for submitting a name change.

**3. Q Can we use fingerprint cards provided by another authority?**

A No. You must request from and use the fingerprint cards specifically provided to you by this department. Any others will be rejected.

**4. Q What is the procedure for filing a request for change in company's name?**

A Provide the following:

- Page 1 of Form MU-1 (mortgage companies) or the NH License Application Form (all other licensees) with "amendment" checked and the items being amended circled.
- Return current original licenses to the New Hampshire Banking Department.
- Copy of Home State Secretary of State registration of the new name.
- Copy of New Hampshire Secretary of State Registration of the new name.
- Original surety bond amendment/rider to indicate new name (if applicable).
- NH Form U2 *Uniform Consent to Service of Process* in the new name.

**5. Q My company is changing its form of organization. We will retain the same employer identification number and there will be no other changes. Do I file this as a name change or do I have to file an entirely new application?**

A Because of the change of organization type, it will be necessary to file an entirely new application. At the time the new application is approved, you will surrender the previous company's license.

**6. Q What is the procedure for a change of address?**

A Provide the following:

- Page 1 of Form MU-1 (mortgage companies) or the NH License Application Form (all other licensees) checking off "amendment" and circling the change.
- Return of the current original license/s to this office.
- Provide original surety bond amendment/rider where applicable.
- Provide the date the change of address is effective.

**7. Q My company is an internet lender or broker. Do we have to be licensed?**

A Yes. The company must be licensed just as a traditional consumer loan or mortgage company is licensed and the same rules apply that to traditional lenders and brokers apply to internet companies.

**8. Q Are there any laws, rules, or guidelines pertaining to internet lending and/or brokering of consumer loans?**

A Internet lenders and brokers must be licensed by the Banking Department to engage in certain consumer transactions in New Hampshire. Internet entities must comply with all state licensing laws and regulations, as well as all federal requirements, regardless of whether the loan is an electronic or paper transaction. However, any entity who acts as a payday or title loan lender is required to have a "brick and mortar" office that consumers may visit within the state.

**License Renewal**

**9. Q My license expires on December 31. I have sent in my renewal application. Will I have to cease operations if I do not receive my new license by the date of expiration on the old license?**

A If the department has received your renewal application and fee, either electronically or in hard copy, prior to December 1 of that year, the old license will remain in effect until the department either approves or denies your renewal application. You may continue to operate under the old license until further notice. If nothing has been filed with the department as of December 31, your license will expire by operation of law, and it will be necessary to submit an entirely new application.

**10. Q I have a license issued by the department. Do I have to fill out the application to renew or can I just send in my fee?**

A We encourage you to use the electronic filing option that is available to you. In November, we will communicate with the person you have designated as your licensing contact person as to the electronic renewal filing requirements for that year. Renewal forms in hard copy will be available on our website for limited use.

**11. Q If I file electronically, will I still receive an original license ?**

A Yes. You will receive an original license for your principal office and any branches you may have by return mail.

**Branch Offices**

**12. Q Do I have to license all of my branch offices?**

A No. You only have to license branch offices that have a physical location in the State of New Hampshire.

**13. Q Is the branch office required to have a manager on site?**

A Yes. The branch office manager must be present in the office whenever it is open for business.

**License Surrender**

**14. Q What is the procedure for surrendering a license?**

A Download the Surrender/Expiration form and its instructions from this website and you will be provided with all of the information and the required timeframe for meeting the surrender/expiration requirements.

**15. Q Do I have to file the Surrender/Expiration form if I choose not to renew my license?**

A Yes. This form and its attendant attachments/instructions must be filed whether you surrender your license or allow it to expire.

**Report Filing Requirements**

**16. Q I filed my annual report with the State of New Hampshire. Why am I receiving a fine notice for not filing?**

A All licensees (except retail sellers & mortgage servicers) are required to file an annual report of NH business for the preceding calendar year on or before February 1<sup>st</sup> of the ensuing year. If February 1<sup>st</sup> falls on a weekend day, the report is due the following business day.

It is important to remember that if you are registered with the New Hampshire Secretary of State's office to do business in New Hampshire and are also licensed with the Banking Department, both departments require that you file an annual report. The Banking Department's Annual Report is due on or before February 1, and the Secretary of State's is due on or before April 1 of each year. They are two separate reports requiring distinct information for each department and the filing of one has no bearing on the filing of the other.

You may also be fined if you think that you met your financial statement filing requirement when you filed your annual report. These also are two separate Banking Department filing requirements.

**17. Q But I did no business in New Hampshire until after the first of the following year?**

A Both annual reports and financial statements must be filed on time even if the company did no business in New Hampshire. The filing is a condition of holding the license.

**18. Q Can I get an extension for filing either my Annual Report or my Financial Statement?**

A No. There is no provision in our statutes for a filing extension. Unless these filing requirements are met, the company will be subject to the \$25-per-day penalty for failure to file. If however your company prepares an audited financial statement and it is not yet prepared, you may file an internally prepared financial statement, certified as true and accurate by the company's financial officer; this will stop the financial statement fine from accruing until such time as you can file the audited statement.

**19. Q If my fiscal year ends in October, November or December, and I only become licensed in one of those months, why am I subject to filing a financial statement in January, February or March of**

**the following year when I only held my license for one, two or three months in the previous year before having to renew it?**

A All licensees (except retail sellers & mortgage servicers) are required to file their financial statements within 90 days of their fiscal year end. This means you will always be filing a statement of your company's financial position for the *prior* year. Therefore, anyone licensed in the three months immediately preceding the expiration of their license on December 31, will be subject to filing a financial statement and will be subject to a fine if it is not filed in a timely manner. If the company holds a license on the due date of the financial statement filing, the company must submit a financial statement.

### **NH Interest / Lending Rates**

**20. Q Does New Hampshire have usury laws limiting interest rates on consumer loans or mortgage loans?**

A No, New Hampshire does not currently have any statutory limits on consumer loan interest rates. NH Banking law simply requires that the interest rate must be agreed upon by the parties.

### **Examinations**

**21. Q I am asked to provide “Work papers to supplement and document information supplied on the annual report filed with this office as part of the examination. What documents does the department consider to be “work papers”?**

A You are required to file with the department an “Annual Report” each year on or before February 1, “concerning the operations for the preceding year...” The department verifies the numbers reported on the annual report. This is done partly by reviewing the documents (work papers) that you used to arrive at the figures reported. Typically, this may be a spreadsheet in which you have listed each loan, or a report generated by the software that you use. You must be able to recreate the calculations used for annual report figures filed with the department.

## **Mortgage Banker/Broker FAQs**

### **General Questions**

**22. Q Are there any prohibitions regarding prepayment penalties on mortgages secured by NH property?**

A Prepayment penalties are not prohibited by NH law. RSA 397-A:15 requires that any prepayment penalty must be disclosed in the note or the addendum to the note in bold print. Second mortgage loan prepayment penalties are limited to the first 5 years of the loan.

**23. Q Do I need a license to do reverse mortgages?**

A Yes. You would need to have a mortgage banker license.

**24. Q I'm a residential mortgage broker and wish to start business immediately. Can I accept and process mortgage loan applications while I'm waiting to receive an approved mortgage broker license from the Banking Department?**

A No. A person may accept and process residential mortgage loan applications only after receiving their mortgage broker license from the department.

**25. Q I am a licensed mortgage banker subject to the provisions of RSA 397-A. I also engage in mortgage servicing activities as defined in RSA 397-B. Am I required to obtain another license of registration pursuant to RSA 397-B?**

A No. In accordance with the provisions of RSA 397-B:10, any mortgage banker, already licensed under RSA 397-A, that engages in mortgage servicing activities may conduct those activities without obtaining an additional mortgage servicer license. All other provisions of RSA 397-B are applicable to any mortgage servicing activities the mortgage banker or broker may perform.

**26. Q You only issue a banker or a broker license. Does either license allow us to make or broker second mortgages?**

A Yes. A mortgage banker or a mortgage broker license allows you to make or broker both first and second mortgages.

**27. Q Our company table funds loans. Should we apply for a mortgage broker or mortgage banker license?**

A If you are closing loans in your own name you must be licensed as a mortgage banker. If you have a banker license you are also able to broker loans at your option. However, mortgage brokers are never allowed to fund any loans, or to be listed on the mortgage or the note. See the department's Newsletter, Winter 2005, Volume 4, and Issue 1 that is available on our website.

**28. Q Do I need a license if I'm doing only one mortgage loan in New Hampshire?**

A Most likely. You must have a current license to broker or make mortgage loans secured by New Hampshire Property. New Hampshire does not have a de minimus exemption for entities. The narrow exemptions are set forth in RSA 397-A:4 (viewable on [www.nh.gov/banking/rsa.html](http://www.nh.gov/banking/rsa.html).)

**Branch Offices**

**29. Q May I establish a branch office in a real estate company?**

A Yes. You must clearly disclose the fact your company is separate entity and is operating totally independently from the real estate company.

**30. Q If I share office space, do we have to have our office walled off separately and maintain a separate entrance?**

A New Hampshire has no requirements. You should review and follow the HUD requirements, however.

**31. Q Does a branch office manager have to qualify with three of the last five years of supervisory experience?**

A This requirement applies to at least *one person within the organization*. The qualified person must be someone employed in the home office on a full time basis. However, the branch office manager should possess sufficient knowledge and experience in the field to enable him/her to effectively and compliantly manage the operations of the branch office.

**Mortgage License Financial Requirements**

**32. Q RSA 397-A: 5, III(c) requires that, at a minimum, all mortgage banker applicants demonstrate a net worth of \$100,000 in cash or marketable securities. Is this amount required to be maintained at all times during the license period?**

A Yes. A mortgage banker licensee must maintain a minimum net worth of \$100,000 at all times during the period the mortgage banker holds a license, or the mortgage banker must post a surety bond in the amount of \$100,000. Department examiners will verify that this statutory requirement is met during the course of licensee examinations. If a mortgage banker fails to meet the net worth requirement at any time, a \$100,000 surety bond is required.

**33. Q I hold a mortgage banker license. I have a net worth exceeding the statutory requirement of \$100,000. I thought I did not have to file a surety bond.**

A New legislation effective August 18, 2006 requires *all* persons holding a mortgage banker license to post a \$20,000 surety bond regardless of net worth. If your net worth falls below the \$100,000 statutory minimum, you will have to increase your \$20,000 bond to \$100,000.

**34. Q I have filed the newly required (effective 8/18/06) \$20,000 mortgage banker/broker bond required by my mortgage banker license. If my net worth falls below \$100,000, do I have to file another surety bond for \$100,000?**

A No, but if your net worth falls below \$100,000, you will have to increase your \$20,000 bond to \$100,000.

### **Examinations**

**35. Q I have a mortgage license. What documents are required for examination purposes?**

A An examination consists of a review of loan files and any documents relating to your company's status and financial well being, regardless of the type of license you hold. In addition to the loan files, the documents you will be asked to provide include, but not limited to the following:

- Corporate or organizational documents evidencing "Good Standing" (this encompasses the home state Certificate of Incorporation and the Foreign Corporation Certificate)
- Trade name certificates (NH and home state if applicable)
- List of owners, officers, directors (or members, partners, limited partners listed on Schedules A & B)
- Current financial statements to include a balance sheet and a profit / loss statement (most recent year and most recent quarter end)
- The most recent federal income tax return
- Operating account (register) journal and escrow account (register) journal, including corresponding bank statements for these accounts. You may be asked to provide copies of canceled checks or wire transfers that support the (register) journal entries.
- A list of correspondent lenders or brokers
- Work papers supporting the figures reported on your most recent annual report (you must demonstrate how the numbers filed on the annual report were calculated)
- Current interest rate sheets
- Copies of written consumer complaints
- Copies of any insurance agreements/policies available through your company
- A list and summary description of all loan products offered by your company
- A list of all affiliates, subsidiaries, parents with whom your enterprise is associated (you may submit an organizational chart to fulfill this requirement)
- Copies of media advertisement distributed in New Hampshire.
- A copy of your company's policy and procedures manual
- A list of current lending or brokering licenses issued by other states

- Copies of GNMA, FNMA, FHLMS approval letters if you issue Rate Lock Commitments
- Written policies and procedures that detail your process for compliance with privacy and safe guarding of consumer non-public information.
- All written policies and procedures.
- All third party agreements / contracts.
- The written polices that are in place that are in accordance with the Commissioner's order of November 13, 2006 concerning the Guidance on Nontraditional Mortgage Products.
- Emails and electronic documents are records the department frequently reviews. Be prepared to provide access to all documents and records no matter the storage media, including providing passwords and passcodes to access the documents. This would include internet and intranet access.

**36. Q What documents are required to be kept in a mortgage loan file for examination purposes?**

A The following is a list of documents the examiners review as part of the examination process. If you are only licensed as a broker, not banker, you need to maintain complete loan files which contain copies of all paperwork generated during the lending process (including a copy of the final Truth in Lending Disclosure and HUD Settlement Statement). The loan file should tell the complete story of the lending process, starting with the first contact with the potential borrower through the closing of the loan. The department will review the following documents (please note this is not an exhaustive list of documents that may be in the loan file):

- 1003 credit application
- Note
- Mortgage
- Good Faith Estimate
- Truth-in-Lending Disclosure (initial and final)
- HUD-1 or HUD-1A
- Appraisal
- Affiliated Business Arrangement disclosure
- Equal Credit Opportunity Act disclosure (adverse action notice)
- Credit report
- 1008 Uniform Underwriting Worksheet
- All verifications performed such as VOEs and VORs
- Re-disclosures provided to the applicant during the lending process (if any)
- Copies of the "Privacy Statements" given to the applicant
- Detailed payment transaction histories if servicing the loans
- Documents that support the policies you have in place in regards to Guidance on Nontraditional Mortgage Products including the ARM and alternative mortgage disclosures for each product that that the consumer considered in the application process.
- Re-pricing disclosures or notes of discussions (telephone logs) concerning the re-pricing of the products offered, including any credit reports, due diligence for no doc / low doc, stated income, no asset or any other non-traditional mortgage product, including amortization schedules if applicable. These documents should be in accordance with your written policies concerning non-traditional mortgage products.
- Telephone logs, emails, third party communications, or any notes that were generated during the process from application to closing.
- Payment transaction histories if you service the loan after closing.
- Transaction history detailing the purpose and disbursements in relation to any up front fees collected from the consumer.

## Mortgage Loan Servicer FAQs

### General Questions

**37. Q Does a mortgage banker have to apply for a separate license as a mortgage servicer?**

A: No.

## Sales Finance / Retail Seller FAQs

### General Questions

**38. Q I am licensed by the Department of Safety. Do I still need a Banking Department license?**

A Maybe – The Department of Safety and Banking Department regulate different parts of the buying/selling process. If you plan to provide financing for or to arrange financing of motor vehicles, or if you plan to offer “buy here, pay here” programs, you are required to have either a “retail seller” license or a “sales finance company” license from the department. If you are unsure if you need a license please contact the Licensing section at 603-271-8675.

**39. Q Is an automobile seller that finances automobile purchases but does not charge any interest on a retail installment contract or “buy here pay here” plan required to obtain a sales finance company license?**

A Yes. A sales finance company license is required whenever a person provides credit to purchase a motor vehicle, without regard to the interest rate. The finance charge or rate of interest a creditor charges pursuant to a motor vehicle financing agreement does not affect the requirement that the creditor be licensed department.

### Examinations

**40. Q I am licensed as a sales finance company. I have been notified of an upcoming examination of my activities. What documents are required to be kept in the loan files for examination purposes? (Please note that retail sellers are not required under state law to be examined every 18 months unlike other license types, but may be examined at the Commissioner’s discretion).**

A The following is a list of documents the examiners review as part of the examination process. We require that you provide complete loan files, which would be copies of all paperwork generated during the lending process. The department may review the following documents (please note this is not an exhaustive list of documents that may be in the loan file):

- Retail Installment contract
- Purchase and Sales Agreement (purchase order)
- Copy of the title or title application
- Detailed Payment Transaction history
- All Receipts for payments made in cash
- Copies of any warranties / service agreements sold with the vehicle
- A list of correspondent retail sellers (motor vehicle dealers)
- In addition to the above, all repossession files must also include forms required by the Department of Safety:
  - NH Affidavit of Repossession
  - Notice of Default
  - Notice of Disposition
  - Vehicle Damage form

- Auction Consignment form

## **Small Loan Lender FAQs**

### **General Questions**

**41. Q Is a small loan lender required to maintain a “brick and mortar” location in New Hampshire?**

A Any small loan lender who is in the business of offering payday or title loans must maintain a physical location in the state that is readily accessible to consumers.

**42. Q Is a license required for offering educational loans?**

A Our statutes do not apply to any person engaged solely in the business of making loans for educational purposes or to the loans made by such persons.

**43. Q I have a customer who cannot repay the principal balance of a payday loan. Can I renew the loan?**

A No. Payday loans cannot be refinanced, renewed, or extended by the lender. The borrower must repay the full amount of the payday loan from the borrower’s own funds before the payday lender can make a new loan to the borrower. Contemporaneous transactions, where a borrower “repays” and immediately obtains a new loan are considered to be loan renewals or refinances and are not allowed. If a lender makes a new note (loan), it is a refinance of the prior loan if the proceeds pay off the prior loan. To determine if a loan is a refinance, renewal or extension, ask yourself “When the borrower completes the loan transaction, does he/she have the proceeds (money) of the loan in his/her hands available to spend as he/she likes?” If the answer is “no”, the transaction was a renewal or a refinance of the prior loan.

## **Debt Adjustment Service FAQs**

### **General Questions**

**44. Q Is there an exemption from licensure for a “not-for-profit” organization that engages in debt adjustment services?**

A No.

**45. Q Is my debt adjustment contract limited to a term of 24 months?**

A Yes.

## **Money Transmitter FAQs**

### **General Questions**

**46. Q My company is an authorized delegate for a money transmitter. Does it have to have policies and procedures to comply with the Bank Secrecy Act? Does it have to issue Suspicious Activity Reports (SARs) to the Financial Crimes Enforcement Network (FinCEN) and Currency Transactions Reports (CTRs) to the Department of Treasury?**

A Yes.

## **Non-Bank Cash Dispensing Machine FAQs**

### **General Questions**

See Frequently Asked Questions on the main page of this website under *Non-Bank Cash Dispensing Machines*