

*2nd*  
*Draft*

The Consumer Credit Administrative Division of the New Hampshire Banking Department began a non-depository First Mortgage Banker and Broker examination of Financial Resources & Assistance of the Lakes Region Inc on May 9, 2001. The examination was conducted under the provisions of New Hampshire RSA 397-A: 12.

**I. Overview:**

1. Financial Resources & Assistance of the Lakes Region Inc (FRI, the Company) is a company licensed as a First Mortgage Banker and Broker by the State of New Hampshire Banking Department. The Company is also licensed as a Second Mortgage Home Loan Lender and has a Small Loan license pending as of the exam date. The scope of this examination covers all activity licensed by the State of New Hampshire Banking Department. The Company is owned by the president of the company, Mr. Scott Farah and has one licensed location on Northview Drive in Meredith, New Hampshire at which loans secured by New Hampshire property is processed. FRI has indicated that the Company has numerous out of state locations that are licensed in the corresponding state. The processing of these out of state loans is performed at the Meredith location. The president of the Company, Mr. Scott Farah stated that the out of state locations are used for origination purposes only for those loans secured by property located in the corresponding state.

2. Examiner Kimothy Griffin reviewed a sample of First Mortgage loans secured by New Hampshire real estate. A total of 22 files (17.6% of the 125 loans reported on the annual report) were reviewed for compliance with NH RSA 397-A, RSA 358-K, the Federal Board of Governors Regulation Z (12 CFR 226), Regulation B (Equal Credit Opportunity), Regulation X, Real Estate Settlement Procedures Act, and Regulation AA

(Unfair or Deceptive Acts or Practices). The products offered and reviewed consisted of conventional loans, adjustable rate mortgages, and balloon notes. The loan sample consisted of 6 (27.3%) for purchase money loans and 16 (72.7%) refinances.

3. The Company specializes in the brokering of loans secured by New Hampshire real property. FRI has indicated that the loans are table funded through various lenders, yet the loan files reviewed was closed in the name of the correspondent lender. The Company reported on the required Annual Report that 2 loans were brokered as a second mortgage in the year 2000. The Company states that it does very few second mortgages and has not done any small loans to date.

4. The Company has indicated that currently there are 10 employees including the owner that conduct business from the Meredith location. FRI states that there are also four "1099" contracted independent agents that "work from their homes". (Mr. Farah). The independent agents originate loans exclusively for the Company, as indicated by the contracts and forward the completed applications to the Meredith location for processing. The contracts state that the "sales representative" (the contracted agent) is compensated at the rate of 50% of the gross commission. The Company states that the independent agents that originate loans secured by New Hampshire property are located in Tuftonboro, Tilton, Laconia, and Manchester.

5. Mr. Farah has stated the Company has an affiliate relationship with Insurance Options Inc, an insurance agency that is owned by Mr. Farah. The affiliated company offers credit life insurance to borrowers that obtain funding through FRI via advertisement that is included in the loan package submitted to the borrower. FRI states that the Company does not require the borrower to purchase the insurance products from its affiliate.

## II. Records:

1. All loan files were reviewed for compliance with the various statutes concerning the proper and timely remittance of disclosures and other documentation. The files are maintained in the principal location in Meredith. Review of the files indicated that proper disclosures are provided as required with the exception of the right of rescission required for the 16 refinances as prescribed by Regulation Z, 12 C.F.R. 226. The files were also missing the affiliated business arrangement disclosure for the affiliated insurance company as required by Regulation X, (RESPA) part 3500.17 (b) (1) which states in part "Prior to the referral, the person making the referral has provided to each person whose business is referred a written disclosure." There were no payment histories to review as the loans are closed with servicing released to corresponding lenders. Vendors invoices are not maintained with the individual files, making it difficult to verify payments made to third parties on behalf of the borrower. The Company states that there are no payments to third parties via FRI, all third party payments are made via the closing attorney or directly by the borrower P.O.C.

2. The Company provided a copy of the audited financial statements for the years ended December 31, 2000 and 1999. The statements indicate that at year-end December 31, 2000 the Company has no liquidity and is insolvent in that it reports \$0 in Cash and Cash Equivalents with outstanding liabilities of \$699,662. Assets consist of Notes Receivable (\$777,069) and Property and Equipment (\$12,070). It is doubtful the market value of the assets would equal the booked value if the Company were forced to dispose of the assets to satisfy the liabilities, thereby making the company insolvent. The lack of Cash and Cash Equivalents violates the licensing requirements for the Small Loan license pursuant to RSA 399-A: 14 (b), which states in part "the applicant has available for use in such business at the location specified in the application at least \$25,000, or, in the case of the licensee, has such amount available or actually invested in loans made under this chapter." The Company indicated on the year 2000 Annual Report filed with the Banking Department that it has no money invested in this type of loan activity. The Company does

meet the minimum requirements of \$25,000 as provided for in RSA 398A: 1-a (IV), Second Mortgage Home Loan Lender license in that the Company reported 2 second mortgage loans totaling \$53,500 for the year ended December 31, 2000.

### III. Interest and Fees:

1. The Company states that it does not service the loans originated by FRI. The loans are closed in the names of the correspondent lenders who also procure the servicing rights to the loans. It was noted as stated above that the Company currently has Mortgage Notes Receivable on the Company's books (reported on the audited financial statements) as follows:

First Mortgage Notes Receivable	\$5,339
Second Mortgage Notes Receivable	\$41,561
Unsecured Notes Receivable	\$475,362

The Company indicates that of the above stated Notes Receivable \$438,783 are non-performing. The audited report for the period states "All mortgages were secured and are in various stages of litigation to determine the amount of repayment if any. These mortgages for financial statement purposes, are no longer accruing interest." The indication is that the Company is currently not servicing loans.

2. The loan files reviewed revealed the contract rates to range from 7.38% to 14.06%, The Annual Percentage Rates as indicated on the Truth in Lending disclosures noted in the loan files reviewed were estimates and were not within tolerances as set by Regulation Z, 12 C.F.R. 226.22 (a)(2). The Company states that the loan files do not contain the final Truth in Lending disclosure due to the lender completes the disclosure. FRI stated that the final disclosure is maintained in the files of the closing attorney and was able to procure copies for review. It should be noted that the preliminary Truth in

Lending disclosures maintained in the files of the Company are not always properly disclosed as estimates (see Violations below)

3. It was noted in the loan files reviewed that the Company has a pattern and practice of “up-charging” pass through fees, specifically fees for credit reports (see violations below). The Company charges \$75.00 for credit reports at closing. Mr. Farah stated to the examiner that the Company does not charge an application fee or any up-front fees. A credit report is ordered whenever an application is received. The \$75.00 charge is to cover the cost of the credit reports of those applicants that for whatever reason do not close a loan. It was also noted that it appears the closing agent used most often by the Company charges fees above that which is generally charged by the industry. It is recognized that the Company would have little control over what fees the closing agent would levy; however, it might behoove the Company to seek additional and alternative agencies to handle loan closings. In the same manner that the Company prides itself for obtaining the best home mortgage loan for the customer, the Company should seek the lowest closing costs available.

4. The Company indicates that a rate lock fee is charged by FRI that ranges from .5% to 1% that is refundable at closing or if the loan is denied for any reason. The fee is not refundable if the loan is cleared to close and the borrower refuses to close. It was determined that the Company does not actually issue the rate lock, but obtains a rate lock through a correspondent lender. It appears that the fee to lock the rate is actually a pass-through that is required by the correspondent lender.

#### IV. Procedures:

1. The licensee stated that a formal procedure manual is not maintained. Originators are trained through a process of working with an experienced originator and are expected to complete all required forms. The Good Faith Estimate is provided to the applicant as required by Regulation X, RESPA 3500.7(a). It was noted that the Company fails to properly disclose the Yield Spread Premium on the Good Faith Estimate. The Company was cited for this infraction in the previous examination performed by the State of New Hampshire Banking Department, October 1, 1999. Line 800 of the Good Faith Estimate allows for "items payable in connection with loan" and permits for the insertion of these charges under a following line item. A yield-spread premium although paid outside closing (poc) is an item payable in connection with the loan and therefore must be disclosed in the 800 section of the Good Faith Estimate. It was noted that other terms were used on the HUD 1s for this fee paid by the lender to the Company p.o.c. The term and line item number used on the HUD 1 must coincide as disclosed on the Good Faith Estimate in accordance with Appendix A of the Real Estate Settlement Procedures Act (RESPA).

2. The Company indicates that it currently has four "1099" contracted originators that operate from locations within the state other than the Company's licensed location. It was stated to the examiner that it is the duty of the agent to procure a completed application and then to forward the application to the Meredith location for processing. Mr. Farah states that communication is maintained on a regular basis with the applicant throughout the entire loan process to closing.

3. The Company, as of the date of examination, maintains a web-site at [biz.fcgnetworks.net/fra](http://biz.fcgnetworks.net/fra), which advertises the various products and loan services offered by FRI. Review of the site indicates that the Company currently accepts loan applications from satellite locations in Massachusetts, Indiana, Michigan, North Carolina, Oklahoma, Rhode Island, and Washington. It was stated to the examiner that these satellites are duly licensed in the states they are located in and that only mortgages secured by property in

that state is accepted. The completed application is forwarded from the satellite to the Meredith, New Hampshire location for processing.

## VI. Insurance and Warranties:

1. The Company has an affiliated relationship with an insurance agency that is 100% owned by the president, Mr. Scott Farah. It was indicated to the examiner that a flyer that is also employed as a mailer is included in the loan package submitted to the borrower. Review of the flyer revealed that the type of insurance offered is a term life insurance policy designed to cover a 10, 15, 20, & 30-year mortgage loan. It was noted that there were no copies of the required Affiliated Business Arrangement disclosure as required by RESPA, 3500.15 (1), which states in part "Prior to the referral, the person making a referral has provided to each business person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in Appendix D." A copy of the disclosure must be maintained in each loan file if the disclosure is properly provided to the borrower.

*See attached  
disclosure  
copy  
in file*

## VII. Advertising

1. Copies of all advertising materials were requested for examination purposes. It was stated that the Company does limited advertising. A copy of an advertisement that occasionally runs in local printed media forms was provided for review. The advertisement appears to be in compliance with New Hampshire law; however violates

Regulation Z, 12 C.F.R. 226.24(c). The advertisement states "No money down", which is a triggering term that requires other disclosures. Regulation Z, 12 C.F.R. 226.24 (c) states in part "Advertisement of terms that require additional disclosures.

*See page 15 of the*

*General of paragraph 24(c)(1). Downpayment is not a triggering term*

(1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c) (2) of this section:

- (i) The amount or percentage of any downpayment.
- (ii) The number of payments or period of repayment.
- (iii) The amount of any payment.
- (iv) The amount of any finance charge.

(2) An Advertisement stating any of the terms in paragraph (c) (1) of this section shall state the following terms:

- (i) The amount or percentage of the downpayment
- (ii) The terms of repayment
- (iii) The "annual percentage rate", using that term, and, if the rate may be increased after consummation, that fact.

2. The web-site of the company was reviewed for compliance of all laws and statutes regulating advertising, as this is a form of media advertisement. It was noted that the site advertises "Mobile Home Loans" with "as little as 5% down". This advertisement contains a triggering term and violates Regulation Z, 12 C.F.R. 226.24(c) as stated above in number 1. The statement of the amount of downpayment requires that the advertisement also contain the terms of repayment, the Annual Percentage Rate, and if the rate does increase after consummation, such as an Adjustable Rate Mortgage, that fact. It was also noted that the Company has failed to disclose the valid license number pursuant to RSA 397-A: 14-a, III which states in part "Any advertisement, printing, display, publication, distribution, or broadcast offering loans governed by this chapter shall clearly and conspicuously contain the valid and existing license number issued by the banking department under this chapter."

*This is applicable here*

## VIII. Consumer Inquiries and Complaints:

1. Review of the Banking Department records indicates that 1 written consumer complaint has been received on February 1, 1999. The records state that the complaint was referred to the New Jersey Banking Department and appears to be satisfactorily resolved. It was stated to the examiner that the Company does not have any written complaints; however, a discussion is currently ensuing with a past client in which the client claims the Company failed to properly disclose the terms of the loan. The Company claims no wrongdoing in this matter. It is unsure whether the matter will result in litigation at this time. The Company states that policy and procedure is in place concerning consumer complaints and inquiries.

## IX. Violations:

1. The Company does not properly disclose the yield-spread premium on the Good Faith Estimate in violation of RESPA, Appendix A. It is the position of the Banking Department that this premium is a mortgage broker fee and must be disclosed in the "800" section of the Good Faith Estimate and correspondingly on the HUD 1. Although the lender funds the yield-spread premium at closing, it is a fee paid by the borrower over the life of the loan. The fee is "built" into the contract rate of the loan resulting in a higher rate to the borrower. This fee is considered a cost to the borrower to obtain credit and must be disclosed per the guidelines of RESPA. This fee must be disclosed in the "800" section pursuant to RESPA, Pt. 3500, Appendix A which states in part "Lines 808 – 811 are used to list additional items payable in connection with the loan including a CLO Access fee, a mortgage broker fee." (*Emphasis added*).

2. The files pertaining to refinances were missing the required "Right of Rescission" disclosure. Licensee stated that the disclosure is maintained in the files of the closing

agent. It is recognized that the correspondent creditor issues the right of rescission. RSA 397-A: 11 states in part "The licensee shall maintain such records as will enable the banking department to determine whether the licensee's business is in compliance with the provisions of this chapter and the rules adopted pursuant to it." Regulation Z, 12 C.F.R. 226.23 allows for the consumer to the right of rescission on those "credit transaction(s) in which a security interest is or will be retained in a consumer's principal dwelling." Paragraph (f) of this section exempts certain transactions, which indicates that a refinance secured by the borrowers principal dwelling is subject to the allowance for a right of rescission.

This is not a violation of the statute FR 215 not 45  
Credits: More to be reported we should wait if but it is not in the...

3. The loan files reviewed indicate that the licensee "up-charges" various pass-through fees. It was noted that it is the pattern and practice of the licensee to charge \$75.00 for a credit report, which the industry indicates the cost is between \$2.50 to \$15.00 per report. It was stated to the examiner that a credit report is ordered for each application received. A fee for credit reports is charged only if the loan is closed. The excess fee charged is used to offset the reports ordered in which the loan does not close. This constitutes a violation of 3500.14 (c) and section 8(b) of RESPA which states in part "No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than services actually performed."

4. The Truth in Lending disclosures that were reviewed incorrectly disclosed the amount financed, the amount of the finance charge, and the annual percentage rates. It was stated to the examiner that these disclosures were the preliminary disclosures and were estimates. A number of these disclosures were not designated as estimates pursuant to Regulation Z, 12 C.F.R. 226.17 (c) (2)(i) which states in part "If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate." (Emphasis added.)

5. The Company does limited media advertising through print and the Internet. Review of the advertisements revealed that they were not in compliance with Regulation Z, 12 C.F.R. 226.24(c). The advertisements state “~~no money down~~” or “as little as 5% down.” Regulation Z, 12 C.F.R. 226.24 (c) states in part “Advertisement of terms that require additional disclosures.

(1) If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (c) (2) of this section:

- (v) The amount or percentage of any downpayment.
- (vi) The number of payments or period of repayment.
- (vii) The amount of any payment.
- (viii) The amount of any finance charge.

(2) An Advertisement stating any of the terms in paragraph (c) (1) of this section shall state the following terms:

- (iv) The amount or percentage of the downpayment
- (v) The terms of repayment
- (vi) The “annual percentage rate”, using that term, and, if the rate may be increased after consummation, that fact.”

Due to the advertisements indicating an “amount or percentage of downpayment” (c, 1,v), the advertisements need to disclose the terms of repayment, the annual percentage rate, and if the rate may be increased after consummation if this is the case.

## **X. Summary and Current Observations:**

Financial Resources & Assistance of the Lakes Region, Inc is not in compliance with various state and federal laws concerning loans secured by real property. The licensee fails to conduct its business in accordance with the intent and purpose of the First Mortgage Bankers statute, RSA 397-A and the Federal Laws that govern mortgage lending.

---

Kimothy C. Griffin  
Bank Examiner