STATE of NEW HAMPSHIRE
BANKING DEPARTMENT
53 Regional Drive, Suite 200
Concord, NH 03301

In re the Matter of:	)	Order
Release of Confidential Information	)	
pertaining to	)	
Financial Resources Mortgage, Inc.	)	May 13, 2010
(f/k/a Financial Resources & Assistance	)	
of The Lakes Region, Inc. and	)	
f/k/a Financial Resources National, Inc.)	)	

I. Authority

Pursuant to RSA 383:10-b all records of investigations and reports of examinations by the banking department ("Department") shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be subserved by the publication thereof.[1]

II. Facts

Financial Resources Mortgage, Inc. (f/k/a Financial Resources & Assistance of The Lakes Region, Inc. and f/k/a Financial Resources National, Inc.) ("FRM") has been licensed as a Mortgage Banker from at least May 18, 1989 (with an amended license date of October 30, 2008). It was a non-depository institution.

The Department conducted an un-announced examination of FRM on November 10, 2009 and discovered the office was closed. On November 13, 2009, the commissioner issued an Order to Show Cause and a Cease and Desist Order against FRM. On

[1] RSA 397-A:12, X states that all reports of examinations of mortgage bankers and bankers "shall be absolutely privileged." Absolute privilege does not speak to confidentiality; rather, it protects persons from tort claims alleging defamation where the alleged defamatory statements were made in the course of their official duties in the context of a hearing, i.e. in a closed hearing provided for in RSA 397-a:12, IX.

November 23, 2009, FRM was placed in involuntary bankruptcy under chapter 7 of the Bankruptcy Code by the United States Bankruptcy Court District of New Hampshire (Bk. No. 09-14565-JMD). The bankruptcy was based, in part, on a finding that FRM had abandoned its business premises, had likely ceased business operations and had surrendered control of those business premises to the Department.

In the bankruptcy proceedings it has been alleged that several million dollars in investments have been misappropriated by FRM. There have also been a number of lawsuits filed against FRM by its former investors and numerous preservation of a claim against the state filings pursuant to RSA 541-B:14 submitted to the Department.

II. Discussion

New Hampshire law simultaneously calls for the confidentiality of records of investigations, reports of exams and consumer complaints regarding state financial institutions and for openness in the workings of its government. These two directives need not be at odds. After all, the statute controlling the confidentiality of investigations and report information allows for the release of such information in certain circumstances and the consumer complaint confidentiality provision allows for the release of the "number and type" of complaints. Disclosure, however, must be based on an analysis that in a certain case the ends of justice and the public advantage outweigh the policy governing the confidentiality of certain financial institution information and Department work product. In performing this analysis the policies behind the directives must be understood and the facts of the particular situation applied and balanced within that framework. Disclosure is not to be done lightly and disclosure in one matter does not hold any precedential power, nor predict or necessitate disclosure in another.

Confidentiality

This confidentiality is a result of the unique nature of financial institutions. The current level of confidentiality is paramount to the free flow of information between

regulatory agencies, both federal and state, and the entities they regulate. The release of this information is being done with great consideration to the this over arching need for confidentiality within the regulatory framework.

Disclosure

New Hampshire's Right to Know Law, RSA 91-A, states that "[o]penness in the conduct of public business is essential to a democratic society." RSA 91-A:1. This makes clear that absent an exemption from disclosure, the presumption is on disclosure. Further, the General Court of New Hampshire has established a Joint Legislative Committee to Review the State's Regulatory Oversight Over FRM ("Committee"). The Committee is charged with, *inter alia*, reviewing in detail the ways in which the state regulatory system, including the Department, the Secretary of State's Bureau of Securities and the Consumer Protection Bureau in the Department of Justice, functioned alone and together. In this matter, there is also substantial litigation and other claims arising out of the fraud of FRM.

Without access to FRM records in the possession of the Department, conjecture and coincidence may be embraced as evidence in all of these proceedings. This is not to say that the records contained at the Department will hold all – or any- answers, however, at a minimum it will strip the various proceedings of doubt as to what was known and done by the Department. The public good of determining how the regulatory structure worked or failed to work will be better served with the absence of such doubt.

III. Order

Whereas, given the bankruptcy, fraud and lawsuits involving FRM, there is a legitimate and compelling public interest in access to all FRM information within the Department; and

Whereas, in the case of FRM, the public right to know outweighs any privacy interest of an abandoned business.

Now, therefore, I find that the ends of justice and the public advantage will be subserved by the publication of all information pertaining to FRM in the Department's possession, redacted as described in Exhibit A attached hereto, and it is hereby

ORDERED that all information relating to FRM be released to the public.

/s/

Peter C. Hildreth
Bank Commissioner
New Hampshire Banking Department