

Doc. # 10671 (eff. 9-15-14)

STATE OF NEW HAMPSHIRE

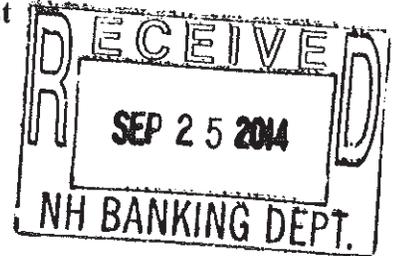
BANKING DEPARTMENT

In re Richard Thompson and Anita Juanice Thompson as Co-Trustees  
of the Day Bypass Trust of the Day 1998 Living Trust

DECLARATORY RULING

Document # 10671

Effective as of the date signed by Commissioner.



The Department issues this declaratory ruling to the Petitioners with respect only to the particular facts and circumstances described in their petition.

INTRODUCTION

The Petitioners, Richard Thompson and Anita Juanice Thompson as co-trustees of the Day Bypass Trust of the Day 1998 Living Trust, petition the Department, seeking a declaratory ruling that "Petitioners are exempt from the provisions of RSA 397-A." For the reasons outlined below, the Department finds that the Petitioners are exempt from licensure under RSA 397-A, provided they comply with the provisions of RSA 397-A:4, VII.

FACTS

The Petitioners are the co-trustees of the Day Bypass Trust under the Day 1998 Living Trust. The Petitioners have not made any mortgage loans in the last twelve consecutive month period.

The Petitioners told an attorney that they were interested in investing some funds of the trust to generate additional income for the trust. The attorney told the Petitioners that he knew a borrower who needed a loan to complete construction of a home in Lyndeborough, New Hampshire. The Petitioners told the attorney that they would be willing to make a loan to the borrower in the amount of \$50,000 at an annual rate of interest of eight percent provided that the loan was secured by a first mortgage on the property in Lyndeborough. The Petitioners instructed the attorney to offer those terms to the borrower and have him contact the Petitioners if he was interested.

The attorney communicated the terms of the proposed mortgage loan to the borrower. Subsequently, the borrower contacted the Petitioners and the parties agreed on the terms of the loan. The final terms of the loan included an amortization schedule of fifteen years with a balloon payment due at the end of a five year term.

The Petitioners visited the property in Lyndeborough to satisfy them that the value of the property adequately secured the loan. The Petitioners also hired an attorney to perform a title search, prepare the loan documents, and conduct the closing.

Subsequently, the Petitioners filed the underlying Petition for Declaratory Ruling to determine whether the Petitioners are exempt from licensure under RSA chapter 397-A.

### LAW AND APPLICATION

Under RSA chapter 397-A, the Department regulates “persons that offer, originate, make, fund, or broker a mortgage loan from the state of New Hampshire or a mortgage loan secured by real property located in the state of New Hampshire.” RSA 397-A:2, I. “[A]ny person who is not exempt under RSA 397-A:4 [must obtain a license from the Department] to act as a mortgage broker, mortgage banker, or mortgage originator . . . .” RSA 397-A:3, I.

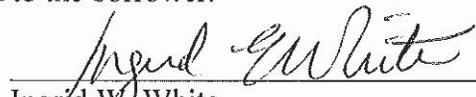
Under RSA 397-A:4, VII, a person “who is not the owner of the real property in question” and who makes “3 or fewer mortgage loans in a 12 consecutive month period” is exempt from licensure under RSA chapter 397-A provided that: (a) “the person does not act as an originator”; (b) “[a]ll origination activities are conducted by an originator duly licensed in this state”; (c) “[o]nly the licensed mortgage banker or broker that employs or retains the originator is directly or indirectly compensated by the person”; and (d) “[o]nly the licensed mortgage banker or broker that employs and retains the originator may directly or indirectly compensate the originator.”

In this case, the Department finds the Petitioners are exempt from licensure under RSA 397-A:4, VII. The Petitioners wish to make a mortgage loan secured by real property owned by a third party. The Petitioners have not made any mortgage loans in the last 12 consecutive month period. Therefore, the Petitioners do not require a license provided that they comply with RSA 397-A:4, VII(a) through RSA 397-A:4, VII(d).

Nonetheless, the Petitioners appear concerned that they cannot comply with RSA 397-A:4, VII(a) through RSA 397-A:4, VII(d) because “[n]either [the] Petitioners nor any other person, have acted as an originator.” The Department disagrees. Origination activity includes “offer[ing] or negotiat[ing] terms of a residential mortgage loan.” RSA 397-A:1, XVII(a). Here, it appears that the parties used the services of an attorney to offer and/or negotiate the terms of the mortgage loan. Attorneys licensed to practice law in New Hampshire are exempt from licensure by the Department when they conduct origination activities provided those activities are: (1) “[c]onsidered by the New Hampshire supreme court to be part of the authorized practice of law within New Hampshire”; (2) “[c]arried out within an attorney-client relationship”; and (3) “[a]ccomplished by the attorney in compliance with all applicable laws, rules, ethics, and standards.” RSA 397-A:4, V. Thus, it appears that the Petitioners may have already complied with RSA 397-A:4, VII by utilizing the services of an attorney to communicate the offer to the borrower.

Accordingly, the Department finds that the Petitioners are not required to obtain a mortgage banker license to provide a mortgage loan to the borrower.

9/15/14  
Date

  
Ingrid W. White  
Deputy Bank Commissioner