

1 applicant, respondent, or licensee has, inter alia,: (a) violated any
2 provision of RSA Chapter 397-A or rules thereunder, (b) not met the
3 standards established in RSA Chapter 397-A..., (d) has filed an application
4 for licensing which as of its effective date, or as of any date after
5 filing in the case of an order denying effectiveness, was incomplete in any
6 material respect, or contained any statement which was, in light of the
7 circumstances under which it was made, false or misleading with respect to
8 any material fact..., (e) has made a false or misleading statement to the
9 Commissioner or in any reports to the Commissioner..., or (k) engaged in
10 dishonest or unethical practices in the conduct of the business of making
11 or collecting mortgage loans.

12 Pursuant to RSA 397-A:17,II(a), the Commissioner has the authority to
13 order or direct persons subject to RSA Chapter 397-A to cease and desist
14 from conducting business, including immediate temporary orders to cease and
15 desist.

16 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
17 order or direct persons subject to RSA Chapter 397-A to cease any harmful
18 activities or violations of RSA Chapter 397-A, including immediate
19 temporary orders to cease and desist.

20 Pursuant to RSA 397-A:17,II(c), the Commissioner has the authority to
21 enter immediate temporary orders to cease business under a license if the
22 Commissioner has determined that such license was erroneously granted or
23 the licensee is currently in violation of RSA Chapter 397-A, or rules or
24 order thereunder.

25

1 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
2 to remove or ban from office or employment, including license revocation,
3 any person conducting business under RSA Chapter 397-A who violates RSA
4 Chapter 397-A.

5 Pursuant to RSA 397-A:17,II(e)(4) the Commissioner has the authority
6 to remove or ban from office or employment, including license revocation,
7 any person conducting business under RSA Chapter 397-A if by a
8 preponderance of evidence the Commissioner determines that the person no
9 longer demonstrates the financial responsibility, character, and general
10 fitness such as to command the confidence of the community and to warrant a
11 determination that the person subject to RSA Chapter 397-A will operate
12 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A.

13 Pursuant to RSA 397-A:17,II(f) the Commissioner has the authority to
14 deny, suspend, revoke, condition, or decline to renew a license if an
15 applicant or licensee fails at any time to meet the requirements of RSA
16 397-A:5,IV-c or RSA 397-A:5,IV-d, or withholds information or makes a
17 material misstatement in an application for a license or renewal of a
18 license. RSA 397-A:5,IV-c,(a)(5) states the Commissioner shall not issue a
19 mortgage loan originator license unless the Commissioner makes at a
20 minimum, inter alia, a finding that the applicant has demonstrated
21 financial responsibility, character, and general fitness such as to command
22 the confidence of the community and to warrant a determination that the
23 mortgage loan originator will operate honestly, fairly, and efficiently
24 within the purposes of RSA Chapter 397-A. RSA 397-A:5,IV-d(a)(1) states
25 that, in addition to other provisions of New Hampshire law and rules, in

1 order to be eligible to renew a license, a mortgage originator shall, inter
2 alia, meet and continue to meet the minimum standards for license issuance
3 under RSA 397-A:5,IV-c.

4 Pursuant to RSA 397-A:17,III, if the Commissioner finds that
5 protection of consumers, lenders, or investors requires emergency action
6 and incorporates a finding to that effect in his or her order, immediate
7 suspension of a license may be ordered pending an adjudicative proceeding.
8 The adjudicative proceeding shall be commenced not later than 10 business
9 days after the date of the order suspending the license. Unless expressly
10 waived by the license, the Commissioner's failure to commence an
11 adjudicative proceeding within 10 business days shall mean that the
12 suspension order is automatically vacated.

13 Pursuant to RSA 397-A:17,V, the Department may take action for
14 immediate suspension of a license, pursuant to RSA 541-A:30,III.

15 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
16 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
17 opportunity for hearing, the Commissioner may enter an order of rescission,
18 restitution, or disgorgement of profits directed to a person who has
19 violated RSA Chapter 397-A, or a rule or order thereunder.

20 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
21 provided for under RSA Chapter 397-A, after notice and opportunity for
22 hearing, the Commissioner may assess fines and penalties against a mortgage
23 loan originator in an amount not to exceed \$25,000.00 (for each violation)
24 if the Commissioner finds the mortgage loan originator has violated or
25 failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public

1 Law 110-289, Title V or any regulation or order issued thereunder. Each of
2 the acts specified shall constitute a separate violation.

3 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
4 Chapter 397-A shall be commenced within 6 years after the date on which the
5 violation occurred.

6 Pursuant to RSA 397-A:18, the Department has the authority to issue a
7 complaint setting forth charges whenever the Department is of the opinion
8 that the licensee or person over whom the Department has jurisdiction is
9 violating or has violated any provision of RSA Chapter 397-A, or any rule or
10 order thereunder.

11 Pursuant to RSA 397-A:18,II, the Department has the authority to issue
12 and cause to be served an order requiring any person engaged in any act or
13 practice constituting a violation of RSA Chapter 397-A or any rule or order
14 thereunder, to cease and desist from violations of RSA Chapter 397-A.

15 Pursuant to RSA 397-A:20,IV the Commissioner may issue, amend, or
16 rescind such orders as are reasonably necessary to comply with the
17 provisions of RSA Chapter 397-A.

18 Pursuant to RSA 397-A:21, the Commissioner has the authority to
19 suspend, revoke or deny any license and to impose administrative penalties
20 of up to \$2,500.00 for each violation of New Hampshire banking law and
21 rules.

22 Pursuant to RSA 397-A:21,I-a, any person who willfully violates any
23 provisions of RSA 397-A:2,VI or VII or a cease and desist order or
24 injunction issued pursuant to RSA 397-A:18,II shall be guilty of a class B
25 felony. Each of the acts specified shall constitute a separate offense and

1 a prosecution or conviction for any one of such offenses shall not bar
2 prosecution or conviction of any other offense.

3 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
4 that is or may be an unfair or deceptive act or practice under RSA Chapter
5 358-A and exempt under RSA 358-A:3,I or that may violate any of the
6 provisions of Titles XXXV and XXXVI and administrative rules adopted
7 thereunder. The Commissioner may hold hearings relative to such conduct and
8 may order restitution for a person or persons adversely affected by such
9 conduct.

10 Pursuant to RSA 541-A:30,III, if the agency finds that public health,
11 safety or welfare requires emergency action and incorporates a finding to
12 that effect in its order, immediate suspension of a license may be ordered
13 pending an adjudicative proceeding. The agency shall commence this
14 adjudicative proceeding not later than 10 working days after the date of the
15 agency order suspending the license. A record of the proceeding shall be
16 made by a certified shorthand court reporter provided by the agency. Unless
17 expressly waived by the licensee, agency failure to commence an adjudicative
18 proceeding within 10 working days shall mean that the suspension order is
19 automatically vacated.

20 On March 23, 2010, the Department issued an Order to Show Cause with
21 an Immediate Emergency Suspension and Cease and Desist Order to Respondent
22 Jeffrey Shawn Frost ("Respondent Frost") regarding immediate emergency
23 suspension of Respondent Frost's New Hampshire mortgage loan originator
24 license. RSA 541-A:30,III requires the Department to hold a hearing within
25 ten (10) working days on an immediate suspension against a licensee.

1 The Department alleges the following:

- 2 Issue 1: Simultaneously Representing More Than One Mortgage Banker or
3 Mortgage Broker (RSA 397-A:1, XVII(a));
- 4 Issue 2: Simultaneously Representing More Than One Mortgage Banker or
5 Mortgage Broker (RSA 397-A:3,III);
- 6 Issue 3: Conducting Business Covered by RSA Chapter 397-A Without a Valid
7 License Required by RSA Chapter 397-A (RSA 397-A:14,IV(d));
- 8 Issue 4: Failure to Make Disclosures Required by RSA 397-A (RSA 397-
9 A:14,IV(e));
- 10 Issue 5: Failure to Comply with RSA Chapter 397-A or Other New Hampshire
11 State Law (RSA 397-A:14,IV(f));
- 12 Issue 6: Negligently Making Any False Statement or Knowingly Make A False
13 Statement or Knowingly and Willfully Make Any Omission of a
14 Material Fact in Connection with Information or Reports Filed
15 with the Department and the Nationwide Mortgage Licensing System
16 and Registry (RSA 397-A:14,IV(h));
- 17 Issue 7: Violation of RSA Chapter 397-A Generally (RSA 397-A:17,I(a));
- 18 Issue 8: Failing to Meet Standards Established by RSA Chapter 397-A (RSA
19 397-A:17,I(b));
- 20 Issue 9: Filed a Mortgage Loan Originator Application that is Materially
21 Incomplete and Contains False and Misleading Statements (RSA
22 397-A:17,I(d));
- 23 Issue 10: Made a False or Misleading Statement to the Commissioner (RSA
24 397-A:17,I(e));
- 25 Issue 11: Engaged in Dishonest or Unethical Practices (RSA 397-A:17,I(k));

1 **Issue 12: Simultaneously Representing More Than One Mortgage Servicer (If**
2 **Respondent Frost Considers the 2 Unlicensed Entities Mortgage**
3 **Brokers, then a Mortgage Servicer Registration Would be Needed**
4 **To Service the Two Closed Residential Mortgage Loans) (RSA 397-**
5 **B:1,IV-c);**

6 Accordingly, an adjudicative proceeding shall be commenced pursuant to
7 RSA Chapter 541-A for the purpose of permitting Respondent Frost to show
8 compliance with the above state violations in Issues 1 through 12.

9 Respondent Frost has the right to have an attorney present to
10 represent Respondent Frost at Respondent Frost's expense, or Respondent
11 Frost may represent himself.

12 THEREFORE, IT IS ORDERED, that Respondent Frost appear before the New
13 Hampshire Banking Department on **April 5, 2010 at 10:00 am**, at the
14 Department's offices at 53 Regional Drive, Suite 200, Concord, New Hampshire
15 03301, for the purpose of participating in an adjudicative proceeding, at
16 which time Respondent Frost will have the opportunity to demonstrate why the
17 relief sought in the show cause order with immediate suspension should not
18 become permanent; and

19 IT IS FURTHER ORDERED, that if Respondent Frost elects to be
20 represented by Counsel, said Counsel shall file notice of appearance at the
21 earliest possible date; and

22 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Hearings
23 Examiner, New Hampshire Banking Department is designated as Hearings
24 Examiner in this matter with authority to represent the public interest
25 within the scope of the Department's authority. The Hearings Examiner shall

1 have the status of a party to this proceeding; and

2 IT IS FURTHER ORDERED, a Presiding Officer (to be appointed by the
3 Banking Commissioner) shall issue a RECOMMENDED DECISION in this matter
4 which shall be reviewed and approved, disapproved or modified by the Banking
5 Commissioner; and

6 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
7 for identification only, and filed with the Department and provided to the
8 opposing party **at least five days prior to the April 5, 2010 hearing.**
9 Hearings Examiner shall pre-mark the Department's exhibits with Arabic
10 numbers. Respondent Frost shall pre-mark exhibits with capital letters. An
11 index/list of exhibits providing a brief description of each exhibit with
12 its corresponding pre-marked number or letter shall be filed by both parties
13 simultaneous with the filing of exhibits; and

14 IT IS FURTHER ORDERED, that the parties shall exchange a list of all
15 exhibits and witnesses to be called at the hearing with a brief summary at
16 the hearing, and shall at the same time file a copy of their respective
17 lists with the Presiding Officer; and

18 IT IS FURTHER ORDERED, that all periods referenced in this notice
19 shall be calendar days. If the last day of the period so computed falls on
20 a Saturday, Sunday, or legal holiday, then the time period shall be extended
21 to include the first business day that is not a Saturday, Sunday, or legal
22 holiday; and

23 IT IS FURTHER ORDERED, that the Department shall have the burden of
24 setting forth a *prima facie* case, then Respondent Frost shall have the burden
25 of showing compliance with applicable law by a preponderance of the evidence;

1 IT IS FURTHER ORDERED, that Respondent Frost's failure to appear at the
2 time, date, and place specified may result in the hearing being held in
3 *absentia* and/or default ruling in favor of the Department, without further
4 notice or opportunity to be heard; and

5 IT IS FURTHER ORDERED, that a record of the proceeding shall be made
6 by a certified shorthand court reporter provided by the Department.

7 IT IS FURTHER ORDERED, that all documents shall be filed with the
8 Presiding Officer in the form of an original and one (1) copy and shall bear
9 a certification that a copy is being delivered to the Hearings Examiner and
10 any other parties to this matter in accordance with applicable laws. All
11 documents shall be filed by mailing or delivering them to the New Hampshire
12 Banking Department, ATTN: Presiding Officer 10-013, 53 Regional Drive, Suite
13 200, Concord, NH 03301. Filing by facsimile or electronic transmission shall
14 not be accepted; and

15 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,
16 which shall include findings of fact and conclusions of law, separately
17 stated, no later than ten (10) days following conclusion of the hearing(s) in
18 this matter; and

19 IT IS FURTHER ORDERED, that routine procedural inquiries may be made
20 by telephoning Maryam Torben Desfosses, Hearings Examiner at (603)271-3561,
21 but all other communications with the Department shall be in writing and
22 shall be filed as provided above. *Ex parte* communications are forbidden by
23 statute; and

24 IT IS FURTHER ORDERED, that a copy of this Notice of Hearing shall be
25 mailed to all named Respondents at their addresses of record and that a copy

