

October 30, 2009

HAND DELIVERED

Jeffrey Spill, Esquire
Deputy Director
Bureau of Securities Regulation
Department of State
State of New Hampshire
State House, Room 204
Concord, NH 03301-4989

Re: Financial Resources Mortgage, Inc.

Dear Mr. Spill:

This is written on behalf of Financial Resources Mortgage, Inc., a New Hampshire corporation ("Company") and the holder of a 'mortgage banker' license issued by the New Hampshire Banking Department ("Department"). This matter arose pursuant to the Department's letter dated October 13, 2009 to the Company particularly referencing an internet-based advertisement addressing mortgage funding opportunities. Following initial discussion, you have asked for a copy of such a recent Company advertisement for your review; a copy of the 'advertisement' materials is attached hereto, together with a copy of the Department's letter and the Company's response thereto. Also enclosed for your ease of reference is a copy of RSA 397-A, a recently amended statute entitled "Licensing of Non-Depository First Mortgage Bankers and Brokers" (the "Licensing Act") reference[^] in the Department's letter.

In the subject advertisements, the Company is generally soliciting third party funding of proposed mortgage loans. For example, on page 1 of the attached, the Company is offering third parties the opportunity to invest a minimum amount of \$100,000 (the 'minimum participation') in a loan **to be funded** secured by land and three commercial buildings. At the closing, if any, the (a) mortgage loan documents would be executed **in the name of the actual third party lenders** and these third party lenders would contemporaneously fund the subject loan; or alternatively (b) the loan would be funded by a **contemporaneous** advance of loan funds and an assignment of the loan to the person advancing the funds (see definition of "table funding" taken from the Licensing Act, below).

Exhibit to:

The Company therefore offers proposed loans for "funding" by third party lenders at the closing table (i.e., table funding). Similarly to the many mortgage bankers who 'regularly' fund loans through and in the name of correspondent banks/lenders, the Company works to fund loans on behalf of proposed borrowers through third parties. As stated, the loans are funded and originated in the name of the actual lender, or alternatively, funded contemporaneously by the lender with an assignment of the loan to the lender, as distinguished from the case where the funds are loaned by the 'lender/investor' directly to the Company which then originates the loan in the Company's name.

The following material terms are defined in the Licensing Act:

- (1) **"Lender"** means any person that provides the initial funding for a mortgage and includes any legal successor to the rights of the lender. **For the purpose of a table-funded transaction, the lender is the person who actually provides the funds for the transaction.**
- (2) "Licensee" means a person, whether mortgage banker, mortgage broker, or mortgage originator, duly licensed by the commissioner pursuant to the provision of this chapter.
- (3) "Mortgage banker" means a person not exempt under RSA 397-A:4 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:
 - (a) Makes or originates mortgage loans as payee on the note evidencing the loan;
 - (b) Advances, or offers to advance, or makes a commitment to advance the banker's own funds for mortgage loans, or closes mortgage loans with the banker's own funds; and
 - (c) Otherwise engages in the business of funding mortgage loans.
- (4) **"Mortgage broker"** means a person not exempt under RSA 397-A:4 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:
 - (a) **Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring mortgage loans, or commitments for mortgage loans;**

Exhibit to:

- (b) **Offers to serve as agent for any person in an attempt to obtain a mortgage loan; and**
- (c) **Offers to serve as agent for any person who has money to lend for a mortgage loan.**

(5) "Mortgage lender" means a mortgage banker.

(6) "Table funding" means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of a loan to the person advancing the funds. A table-funded transaction is **not** a secondary market transaction.

In our view, the Company is acting in the capacity of a Mortgage Broker in the advertisements, seeking sources of funding on behalf of the borrowers. The Company is seeking lenders to fund mortgage loans to be originated in the name of the lender, or assigned to the lender contemporaneously with such funding. Analyzed under RSA 421-B, the New Hampshire Uniform Securities Act, in distinction, through and pursuant to the advertisements the Company is: (1) **not** issuing a note in its name, likely a security, to raise funds to originate a loan, and (2) **not** offering to sell a participating interest in an existing funded loan, also likely a security, but only a loan to be prospectively funded. As such, the Company has not engaged in the offer and sale of a security under the Uniform Securities Act.

Please call me with any questions or comments with respect to the foregoing. For the benefit of our records, kindly acknowledge receipt of this letter and its enclosure by signing and dating or date-stamping the enclosed receipt acknowledgement copy of this letter and return it to me in the enclosed self-addressed envelope.

Very truly yours,

Denis J. Maloney

DJM:baf
Enclosures

cc: Scott Farah