

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-121  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Order to Show Cause  
 )  
 5 Petitioner, )  
 )  
 6 and )  
 )  
 7 Maine Capital Mortgage LLC, and Shawn )  
 )  
 8 P. Lyden, )  
 )  
 9 Respondents )

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10 NOTICE OF ORDER

11 This Order commences an adjudicative proceeding under the provisions  
12 of RSA Chapter 397-A and RSA Chapter 541-A.

13 LEGAL AUTHORITY AND JURISDICTION

14 Pursuant to RSA 397-A:17, the Banking Department of the State of New  
15 Hampshire (hereinafter the "Department") has the authority to issue an order  
16 to show cause why license revocation and penalties for violations of New  
17 Hampshire Banking laws should not be imposed.

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

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

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

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

12 **NOTICE OF RIGHT TO REQUEST A HEARING**

13 The above named Respondents have the right to request a hearing on  
14 this Order to Show Cause, as well as the right to be represented by counsel  
15 at each Respondent's own expense. All hearings shall comply with RSA Chapter  
16 541-A. Any such request for a hearing shall be in writing, and signed by the  
17 Respondent or the duly authorized agent of the above named Respondent, and  
18 shall be delivered either by hand or certified mail, return receipt  
19 requested, to the Banking Department, State of New Hampshire, 53 Regional  
20 Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within  
21 10 days of the Department's receipt of the request. If the Respondent fails  
22 to appear at the hearing after being duly notified, such person shall be  
23 deemed in default, and the proceeding may be determined against the Respondent  
24 upon consideration of the Order to Show Cause, the allegations of which may be  
25 deemed to be true.





1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-121  
 )  
 3 State of New Hampshire Banking )  
 )  
 4 Department, ) Staff Petition  
 )  
 5 Petitioner, ) July 6, 2009  
 )  
 6 and )  
 )  
 7 Maine Capital Mortgage LLC, and Shawn )  
 )  
 8 P. Lyden, )  
 )  
 9 Respondents )

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10 I. STATEMENT OF ALLEGATIONS

11 The Staff of the Banking Department, State of New Hampshire (hereinafter  
12 "Department") alleges the following facts:

13 Facts Common on All Counts:

- 14 1. Respondent Maine Capital Mortgage LLC (hereinafter "Respondent  
15 Maine Capital") was licensed as a Mortgage Banker from at least  
16 April 22, 2005 until its license expired on December 31, 2007.
- 17 2. Respondent Shawn P. Lyden (hereinafter "Respondent Lyden") was  
18 the President of Respondent Maine Capital, when licensed by the  
19 Department.

20 Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):

21 Violation of RSA 397-A:13,VI Failure of Officer and Owner to Respond to

22 Department Inquiries (1 Count):

- 23 3. Paragraphs 1 through 2 are hereby realleged as fully set forth  
24 herein.
- 25 4. The Department conducted an examination of Respondent Maine

1 Capital on September 4, 2007, while Respondent Maine Capital was  
2 still licensed with the Department.

3 5. Respondent Maine Capital failed to facilitate the examination by  
4 failing to provide examination materials.

5 6. On July 22, 2008, the Department mailed the invoice for \$500.00 to  
6 Respondent Maine Capital, via U.S. Certified Mail Return Receipt  
7 requested, which Respondents received on July 30, 2008.

8 7. The above named Respondents failed to respond to the July 22, 2008  
9 correspondence from the Department.

10 8. The Department, via U.S. mail, mailed a second notice on August  
11 26, 2008 and a third notice on October 9, 2008.

12 9. The above named Respondents did not respond to any of the three  
13 notices for payment of the \$500.00 invoice.

14 10. On October 29, 2008, the Department mailed a letter via U.S.  
15 Certified Mail Return Receipt requested, indicating the payment  
16 has not been made and the failure to pay the examination fee has  
17 been referred for enforcement. The post office returned the  
18 letter to the Department on or about December 3, 2008 as "return  
19 to sender, unable to forward".

20 11. To date, the above named Respondents still owe the \$500.00  
21 examination fee for the one day examination.

## 22 **II. ISSUES OF LAW**

23 The staff of the Department, alleges the following issues of law:

24 1. The Department realleges the above stated facts in Paragraphs 1  
25 through 11 as fully set forth herein.

1 2. The Department has jurisdiction over the licensing and regulation  
2 of persons engaged in mortgage banker or broker activities  
3 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

4 3. RSA 397-A:12,V provides that the expense of such examination shall  
5 be chargeable to and paid by the licensee. Each of the above  
6 named Respondents violated this provision on at least one occasion  
7 as alleged above. To date, the above named Respondents have  
8 failed to pay the \$500.00 examination invoice.

9 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent  
10 of any licensee shall reply promptly in writing, or other  
11 designated form, to any written inquiry from the Department.  
12 Respondent Lyden violated this provision on at least one occasion  
13 as alleged above.

14 5. RSA 397-A:17,I provides in part that the Commissioner may by  
15 order, upon due notice and opportunity for hearing, assess  
16 penalties or deny, suspend, or revoke a license or application if  
17 it is in the public interest and the applicant, respondent, or  
18 licensee, any partner, officer, member, or director, any person  
19 occupying a similar status or performing similar functions, or any  
20 person directly or indirectly controlling the applicant,  
21 respondent, or licensee: (a) has violated any provision of RSA  
22 Chapter 397-A or rules thereunder, or (b) has not met the  
23 standards established in RSA Chapter 397-A.

24 6. RSA 397-A:18,I provides that the Department may issue a complaint  
25 setting forth charges whenever the Department is of the opinion

1           that the licensee or person over whom the Department has  
2           jurisdiction, has violated any provision of RSA 397-A or orders  
3           thereunder.

4           7. RSA 397-A:21,IV provides that any person who, either knowingly or  
5           negligently, violates any provision of Chapter 397-A, may upon  
6           hearing, and in addition to any other penalty provided for by law,  
7           be subject to an administrative fine not to exceed \$2,500.00, or  
8           both. Each of the acts specified shall constitute a separate  
9           violation, and such administrative action or fine may be imposed  
10          in addition to any criminal penalties or civil liabilities imposed  
11          by New Hampshire Banking laws.

12          8. RSA 397-A:21,V provides that every person who directly or  
13          indirectly controls a person liable under this section, every  
14          partner, principal executive officer or director of such person,  
15          every person occupying a similar status or performing a similar  
16          function, every employee of such person who materially aids in the  
17          act constituting the violation, and every licensee or person acting  
18          as a common law agent who materially aids in the acts constituting  
19          the violation, either knowingly or negligently, may, upon notice  
20          and opportunity for hearing, and in addition to any other penalty  
21          provided for by law, be subject to suspension, revocation, or  
22          denial of any registration or license, including the forfeiture of  
23          any application fee, or the imposition of an administrative fine  
24          not to exceed \$2,500, or both. Each of the acts specified shall  
25          constitute a separate violation, and such administrative action or

1 fine may be imposed in addition to any criminal or civil penalties  
2 imposed.

3 **III. RELIEF REQUESTED**

4 The staff of the Department requests the Commissioner take the following  
5 action:

- 6 1. Find as fact the allegations contained in section I of this Staff  
7 Petition;
- 8 2. Make conclusions of law relative to the allegations contained in  
9 section II of this Staff Petition;
- 10 3. Pursuant to RSA 397-A:17, order each of the above named  
11 Respondents to show cause why their license should not be revoked;
- 12 4. Assess fines and administrative penalties in accordance with RSA  
13 397-A:21, for violations of Chapter 397-A, in the number and  
14 amount equal to the violations set forth in section II of this  
15 Staff Petition; and
- 16 5. Take such other administrative and legal actions as necessary for  
17 enforcement of the New Hampshire Banking Laws, the protection of  
18 New Hampshire citizens, and to provide other equitable relief.

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