

1 State of New Hampshire Banking Department

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3 In re the Matter of:)Case No.: 08-377
)
 4 State of New Hampshire Banking)Notice of Hearing - Order to Show
)Cause with Immediate Suspension
 5 Department,)
)
 6 Petitioner,)
)
 7 and)
)
 8 Lifetime Home Loans, Inc., Daniel)
)
 9 Steven Flamand, and Robert Leonard)
)
 10 McKee,)
)
 11 Respondents)
)

12
13 NOTICE OF HEARING

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 penalties for violations of New
17 Hampshire Banking laws should not be imposed. The Commissioner has the
18 further authority to impose an immediate suspension. Upon a finding of
19 irreparable harm if revocation of the license is delayed, the Commissioner
20 may summarily suspend any license pending final determination of the Order to
21 Show Cause.

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

25 Pursuant to New Hampshire Banking law, RSA 397-A:5 III (c) each
mortgage banker shall post a continuous surety bond in the amount of
\$20,000.00 to the Department.

1 The Department issued to the above named Respondents an Order to Show
2 Cause with an Immediate Suspension and Cease and Desist Order of the license
3 on September 11, 2008. RSA 541-A requires the Department to hold a hearing
4 on such summary action within ten (10) working days.

5 The Department alleges the following:

- 6 **Issue 1: Failure to post continuous surety bond (RSA 397-A:5, III (c));**
7 **Issue 2: Failure to notify Commissioner of change in ownership (RSA 397-A:10,**
8 **II);**
9 **Issue 3: Failure to update information on file with Bank Commissioner (RSA**
10 **397-A:10, IV);**
11 **Issue 4: Failure to provide requested files (RSA 397-A:11, II);**
12 **Issue 5: Failure to provide requested files (RSA 397-A:12, III);**
13 **Issue 6: Failure to facilitate examination (RSA 397-A:12, VII);**
14 **Issue 7: Failure to file financial statement (RSA 397-A:13, II);**
15 **Issue 8: Failure to pay annual report late filing fee (RSA 397-A:13, IV);**
16 **Issue 9: Failure to file additional documents (RSA 397-A:13, V);**
17 **Issue 10: Failure of officers and owners to respond to Department inquiries**
18 **(RSA 397-A:13, VI);**

19 Accordingly, an adjudicative proceeding shall be commenced pursuant to
20 541-A:31 and Chapter 200 of the Department's rules (NH Code of
21 Administrative Rules BAN 200 and JUS 800 as applicable) for the purpose of
22 permitting the Respondents to show compliance with the above state violations
23 in Issues 1 through 10.

24 Each party has the right to have an attorney present to represent the
25 party at the party's expense, or may represent itself.

 THEREFORE, IT IS ORDERED, that the Respondents appear before the New
Hampshire Banking Department on **September 23, 2008 at 10:00 am**, at the
Department's offices at 53 Regional Drive, Suite 200, Concord, New Hampshire
03301, for the purpose of participating in an adjudicative proceeding, at

1 which time the Respondents will have the opportunity to demonstrate why the
2 relief sought in the show cause order with immediate suspension should not
3 become permanent; and

4 IT IS FURTHER ORDERED, that if the Respondents elect to be represented
5 by Counsel, said Counsel shall file notice of appearance at the earliest
6 possible date; and

7 IT IS FURTHER ORDERED, that Maryam Torben Desfosses, Staff Attorney,
8 New Hampshire Banking Department is designated as Hearing Counsel in this
9 matter with authority to represent the public interest within the scope of
10 the Department's authority. Hearing Counsel shall have the status of a party
11 to this proceeding; and

12 IT IS FURTHER ORDERED, that the Commissioner will designate the
13 individual to serve as the Presiding Officer in this proceeding who shall
14 issue a RECOMMENDED DECISION in this matter which shall be reviewed and
15 approved, disapproved or modified by the Bank Commissioner; and

16 IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,
17 for identification only, and filed with the Department and provided to the
18 opposing party **as soon as possible**. Hearing Counsel shall pre-mark the
19 Department's exhibits with Arabic numbers. The Respondents shall pre-mark
20 exhibits with capital letters. An index/list of exhibits providing a brief
21 description of each exhibit with its corresponding pre-marked number or
22 letter shall be filed by both parties simultaneous with the filing of
23 exhibits; and

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

IT IS FURTHER ORDERED, that all periods referenced in this notice shall
be calendar days. If the last day of the period so computed falls on a

1 Saturday, Sunday, or legal holiday, then the time period shall be extended to
2 include the first business day that is not a Saturday, Sunday, or legal
3 holiday; and

4 IT IS FURTHER ORDERED, that the Department shall have the burden of
5 setting forth a *prima facie* case, then the Respondents shall have the burden
6 of showing compliance with applicable law by a preponderance of the evidence;

7 IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,
8 date, and place specified may result in the hearing being held *in absentia*
9 and/or default ruling in favor of the Department, without further notice or
10 opportunity to be heard; and

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

13 IT IS FURTHER ORDERED, that all documents shall be filed with the
14 Presiding Officer in the form of an original and one (1) copy and shall bear a
15 certification that a copy is being delivered to Hearing Counsel and any other
16 parties to this matter in accordance with NH Code of Administrative Rules Ban
17 204.08. All documents shall be filed by mailing or delivering them to the New
18 Hampshire Banking Department, ATTN: Presiding Officer 08-377, 53 Regional
19 Drive, Suite 200, Concord, NH 03301. Filing by facsimile or electronic
20 transmission shall not be accepted; and

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

25 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by
telephoning Abigail Shaine at (603)-271-3561, but all other communications
with the Presiding Officer and with the Department shall be in writing and
shall be filed as provided above. *Ex parte* communications are forbidden by
statute; and

