1 State of New Hampshire Banking Department)Case No.: 08-125 In re the Matter of: 2 State of New Hampshire Banking 3)Order to Show Cause Department, 4 5 Petitioner, 6 and Equihome Mortgage, Corp., and Ray V. 7 Caprio, 8 Respondents 9 10 NOTICE OF ORDER This Order commences an adjudicative proceeding under the provisions 11 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 Hampshire (hereinafter the "Department") has the authority to issue an order 15 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 violating or has violated any provision of RSA Chapter 397-A, or any rule or 21 order thereunder. 22 23 Pursuant to RSA 397-A:20, IV the Commissioner may issue, amend, or rescind such orders as are reasonably necessary to comply with the 24 25 provisions of the Chapter.

Order - 1

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

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NOTICE OF RIGHT TO REQUEST A HEARING

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

1If any of the above named Respondents fails to request a hearing within230 calendar days of receipt of such order or reach a formal written and3executed settlement with the Department within that time frame, then such4person shall likewise be deemed in default, and the orders shall, on the5thirty-first day, become permanent, and shall remain in full force and effect6until and unless later modified or vacated by the Commissioner, for good cause7shown.

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

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The <u>Staff Petition</u> dated July 9, 2009 (a copy of which is attached hereto) is incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and consistent with the intent and purposes of the New Hampshire banking laws; and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested; It is hereby ORDERED, that:

1. Respondent Equihome Mortgage, Corp. ("Respondent Equihome") shall show cause why penalties in the amount of \$2,500.00 should not be imposed against it;

- 2. Respondent Ray V. Caprio ("Respondent Caprio") shall show cause why penalties in the amount of \$5,000.00 should not be imposed against him;
- 3. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 2 above, the

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| 1 | \$500.00 examination fee should not be paid to the Department; |
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| 2 | 4. Respondents shall be jointly and severally liable for the |
| 3 | above amounts alleged in Paragraphs 1 through 3 above; |
| 4 | 5. The above named Respondents shall show cause why, in addition |
| 5 | to the penalties listed in Paragraphs 1 through 4 above, |
| 6 | Respondent Equihome's license should not be revoked. |
| 7 | It is hereby further ORDERED that: |
| 8 | 6. Along with the administrative penalties listed for the above |
| 9 | named Respondents, the outstanding sum of \$500.00 shall be |
| 10 | immediately paid; and |
| 11 | 7. Failure to request a hearing within 30 days of the date of |
| 12 | receipt or valid delivery of this Order shall result in a |
| 13 | default judgment being rendered and administrative penalties |
| 14 | imposed upon the defaulting Respondent(s). |
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| 16 | SIGNED, |
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| 18 | Dated: 07/09/09 /s/ PETER C. HILDRETH |
| 19 | BANK COMMISSIONER |
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| 1 | State of New Hampshire | e Banking Department |
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| 2 | In re the Matter of: |)Case No.: 08-125) |
| 3 | State of New Hampshire Banking |) |
| | |))Staff Petition |
| 4 | Department, |))July 9, 2009 |
| 5 | Petitioner, |) |
| 6 | and |) |
| 7 | Equihome Mortgage, Corp., and Ray V. |) |
| 8 | Caprio, |) |
| 9 | Respondents |) |
| 10 | I. STATEMENT OF | ALLEGATIONS |
| 11 | The Staff of the Banking Department, | |
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| 12 | "Department") alleges the following fact | CS: |
| 13 | Facts Common on All Counts: | |
| 14 | 1. Respondent Equihome Mortgage | e, Corp. (hereinafter "Respondent |
| 15 | Equihome") was licensed as a | Mortgage Banker from at least April |
| 16 | 7, 2006 until its license expi | red on December 31, 2006. |
| 17 | 2. Respondent Ray V. Caprio (he | ereinafter "Respondent Caprio") was |
| 18 | the President and Chief Execut | tive Officer of Respondent Equihome, |
| 19 | when licensed by the Departmen | t. |
| 20 | Violation of RSA 397-A:12,V Failure to 1 | Pay Examination Fee (1 Count): |
| 21 | Violation of RSA 397-A:13,VI Failure of | |
| 22 | Department Inquiries (1 Count): | |
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| 23 | 3. Paragraphs 1 through 2 are h | ereby realleged as fully set forth |
| 24 | herein. | |
| 25 | 4. The Department conducted an ex | xamination of Respondent Equihome on |
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| | Staff Peti | tion - 1 |

| 1 | February 26, 2007, for activities that occurred while Respondent |
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| 2 | Equihome was still licensed with the Department. |
| 3 | 5. On June 8, 2007, the Department mailed the report of examination |
| 4 | and invoice for \$500.00 to Respondent Equihome, via U.S. |
| 5 | Certified Mail Return Receipt requested, which Respondents |
| 6 | received on June 13, 2007. |
| 7 | 6. The above named Respondents failed to respond to the June 8, 2007 |
| 8 | correspondence from the Department. |
| 9 | 7. The Department, via U.S. mail, mailed a second notice on August |
| 10 | 22, 2007 and a third notice on June 24, 2007. |
| 11 | 8. The above named Respondents did not respond to any of the three |
| 12 | notices for payment of the \$500.00 invoice. |
| 13 | 9. To date, the above named Respondents still owe the \$500.00 |
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| 14 | examination fee for the one day examination. |
| 14 15 | examination fee for the one day examination. II. <u>ISSUES OF LAW</u> |
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| 15 | II. <u>ISSUES OF LAW</u> |
| 15 16 | II. <u>ISSUES OF LAW</u> The staff of the Department alleges the following issues of law: |
| 15 16 17 | II. <u>ISSUES OF LAW</u> The staff of the Department alleges the following issues of law: 1. The Department realleges the above stated facts in Paragraphs 1 |
| 15 16 17 18 | <pre>II. ISSUES OF LAW The staff of the Department alleges the following issues of law: 1. The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein.</pre> |
| 15 16 17 18 19 | <pre>II. ISSUES OF LAW The staff of the Department alleges the following issues of law: 1. The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein. 2. The Department has jurisdiction over the licensing and regulation</pre> |
| 15 16 17 18 19 20 | II. <u>ISSUES OF LAW</u> The staff of the Department alleges the following issues of law: The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities |
| 15 16 17 18 19 20 21 | II. <u>ISSUES OF LAW</u> The staff of the Department alleges the following issues of law: The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3. |
| 15 16 17 18 19 20 21 22 | II. <u>ISSUES OF LAW</u> The staff of the Department alleges the following issues of law: The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3. RSA 397-A:12,V provides that the expense of such examination shall |
| 15 16 17 18 19 20 21 22 23 | II. <u>ISSUES OF LAW</u> The staff of the Department alleges the following issues of law: The Department realleges the above stated facts in Paragraphs 1 through 9 as fully set forth herein. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3. RSA 397-A:12,V provides that the expense of such examination shall be chargeable to and paid by the licensee. Each of the above |

as alleged above. To date, the above named Respondents have failed to pay the \$500.00 examination invoice.

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- 4. RSA 397-A:13,VI provides that any officer, owner, manager or agent of any licensee shall reply promptly in writing, or other designated form, to any written inquiry from the Department. Respondent Caprio violated this provision on at least one occasion as alleged above.
- 5. RSA 397-A:17, I provides in part that the Commissioner may by order, upon due notice and opportunity for hearing, assess penalties or deny, suspend, or revoke a license or application if it is in the public interest and the applicant, respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, respondent, or licensee: (a) has violated any provision of RSA Chapter 397-A or rules thereunder, or (b) has not met the standards established in RSA Chapter 397-A.
- 6. RSA 397-A:18,I provides that the Department may issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction, has violated any provision of RSA 397-A or orders thereunder.
 - 7. RSA 397-A:21, IV provides that any person who, either knowingly or negligently, violates any provision of Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law,

be subject to an administrative fine not to exceed \$2,500.00, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

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

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III. RELIEF REQUESTED

23 The staff of the Department requests the Commissioner take the following 24 action:

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1. Find as fact the allegations contained in section I of this Staff

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Petition;

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

IV. RIGHT TO AMEND

14 The Department reserves the right to amend this Staff Petition and to 15 request that the Commissioner take additional administrative action. 16 Nothing herein shall preclude the Department from bringing additional 17 enforcement action under RSA Chapter 397-A or the regulations thereunder.

Respectfully submitted by:

/s/ Maryam Torben Desfosses Hearings Examiner 07/09/09 Date