State of New Hampshire Banking Department

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3	In re the Matter of:)Case No.: 10-464
)
4	State of New Hampshire Banking)
)
5	Department,)
)Notice of Hearing - Order to Show
6	Petitioner,)Cause with Immediate Suspension
)and Cease and Desist Order
7	Upper Valley Mortgage LLC, Benjamin)
)
8	Hunter Lindberg, Justin Craig Bitler,)
)
9	Estate of Lawrence Gene Stern, M.D.,)
)
10	Respondents)
)

NOTICE OF HEARING

12 1. The Department issued to the above named Respondents an Order to Show 13 Cause with Immediate Suspension and Cease and Desist Order on November 24, 14 2010. RSA Chapter 541-A requires the Department to hold a hearing on such 15 summary action within ten (10) working days unless otherwise waived by the 16 Respondents.

17 || IT IS HEREBY ORDERED that:

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18 2. Respondents appear before the New Hampshire Banking Department on 19 Thursday, December 9, 2010 at 10:00 am, at the New Hampshire Banking 20 Department located at 53 Regional Drive, Suite 200, Concord, New Hampshire 21 03301, for the purpose of participating in an adjudicative proceeding, at 22 which time the Respondents will have the opportunity to demonstrate why the 23 relief sought in the Order to Show Cause with Immediate Suspension and Cease 24 and Desist Order should not become permanent.

25 3. Pursuant to RSA 541-A:31,III(b), the legal authorities under which the hearing is to be held are: RSA 541-A:30,III, RSA 397-A:17, RSA 397-A:18, RSA

1	397-A:21 and RSA 383:10-d.		
2	4. The Department's alleged violations against the above named Respondents		
3	in the Order to show Cause with Immediate Suspension and Cease and Desist		
4	Order are as follows:		
5	a. Respondent Upper Valley:		
6	Violation #1: Theft by deception (RSA 397-A:2,III via possible		
7	violation of RSA 637:4 - 1 count		
8	Violation #2: Property obtained by fraud or misrepresentation (397-		
9	A:14,IV(a)) - 1 count		
10	Violation #3: Unfair, deceptive, unethical, or fraudulent business		
11	practices (RSA 397-A:14,IV(n)) - 1 count		
12	Violation #4: Licensee not qualified on basis of financial integrity		
13	(RSA 397-A:17,I(j)) - 1 count		
14	Violation #5: Licensee no longer demonstrates financial responsibility		
15	or character and general fitness (RSA 397-A:17,II(e)(4)) - 1 count		
16	Violation #6: False or misleading statement/report to the Commissioner		
17	(RSA 397-A:17,I(e))- 1 count		
18	Violation #7: Inaccurate financial statement filed (RSA 397-A:13,II) -		
19	1 count		
20	b. Respondent Lindberg:		
21	Violation #1: Theft by deception (RSA 397-A:2,III via possible		
22	Violation of RSA 637:4) - 1 count		
23	Violation #2: Property obtained by fraud or misrepresentation (397-		
24	A:14,IV(a)) - 1 count		
25	Violation #3: Unfair, deceptive, unethical, or fraudulent business		
	practices (RSA 397-A:14,IV(n)) - 1 count		
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1		Violation #4: Failure to meet minimum standards for licensure (RSA
2		397-A:5,IV-d(a)(1) via 397-A:5,IV-c(5)) - 1 count
3		Violation #5: Licensee not qualified on basis of financial integrity
4		(RSA 397-A:17,I(j)) - 1 count
5		Violation #6: Licensee no longer demonstrates financial responsibility
6		or character and general fitness (RSA 397-A:17,II(e)(4)) - 1 count
7		Violation #7: False or misleading statement/report to the Commissioner
8		(RSA 397-A:17,I(e))- 1 count
9		Violation #8: Unfair, deceptive, unethical and fraudulent business
10		practices directed at Consumer A (RSA 397-A:14,IV(n)) - 1 count
11	c.	Respondent Bitler:
12		Violation #1: Theft by deception (RSA 397-A:2,III via possible
13		violation of RSA 637:4 - 1 count
14		Violation #2: Property obtained by fraud or misrepresentation (397-
15		A:14,IV(a)) - 1 count
16		Violation #3: Unfair, deceptive, unethical, or fraudulent business
17	practices (RSA 397-A:14,IV(n)) - 1 count	
18		Violation #4: Failure to meet minimum standards for licensure (RSA
19		397-A:5,IV-d(a)(1) via 397-A:5,IV-c(5)) - 1 count
20	d.	Respondent Estate:
21		Violation #1: Theft by deception (RSA 397-A:2,III via possible
22		violation of RSA 637:4 - 1 count
23		Violation #2: Property obtained by fraud or misrepresentation (397-
24		A:14,IV(a)) - 1 count
25		Violation #3: Unfair, deceptive, unethical, or fraudulent business
		practices (RSA 397-A:14,IV(n)) - 1 count.
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5. The facts as alleged in the Order to Show Cause with Immediate Suspension
 and Cease and Desist Order are herein incorporated by reference.

3 6. An adjudicative proceeding shall be commenced pursuant to RSA 541-A:31
4 for the purpose of permitting the above named Respondents to show compliance
5 with the stated violations.

7. Each party has the right to have an attorney present to represent the
party at the party's expense, or may represent itself or himself. If the
Respondents elect to be represented by Counsel, said Counsel shall file a
notice of appearance at the earliest possible date.

10 8. Maryam Torben Desfosses, Hearings Examiner, New Hampshire Banking 11 Department is designated as Hearings Examiner in this matter with authority 12 to represent the public interest within the scope of the Department's 13 authority. The Hearings Examiner shall have the status of a party to this 14 proceeding.

15 9. The Presiding Officer to be designated by the Bank Commissioner shall 16 issue a RECOMMENDED DECISION in this matter which shall be reviewed and 17 approved, disapproved or modified by the Bank Commissioner.

10. Any proposed exhibits shall be pre-marked, for identification only, and 19 filed with the Department and provided to the opposing party by Friday, 20 December 3, 2010. The Hearings Examiner shall pre-mark the Department's 21 exhibits with Arabic numbers. The Respondents shall pre-mark exhibits with 22 capital letters. An index/list of exhibits providing a brief description of 23 each exhibit with its corresponding pre-marked number or letter shall be 24 filed by both parties simultaneous with the filing of exhibits.

25 11. The parties shall exchange a list of all 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. 1 12. All periods referenced in this notice shall be calendar days. If the 2 last day of the period so computed falls on a Saturday, Sunday, or legal 3 4 holiday, then the time period shall be extended to include the first business day that is not a Saturday, Sunday, or legal holiday. 5 13. The Department shall have the burden of setting forth a prima facie 6

7 case, then the Respondents shall have the burden of showing compliance with applicable law by a preponderance of the evidence. 8

14. Any Respondent's failure to appear at the time, date, and place 9 specified may result in the hearing being held in absentia and/or default 10 ruling in favor of the Department, without further notice or opportunity to 11 12 be heard.

15. The record of the proceeding shall be made by a certified shorthand court reporter provided by the Department. 14

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16. All documents shall be filed with the Presiding Officer in the form of an original and one (1) copy and shall bear a certification that a copy is being delivered to Hearings Examiner and any other parties to this matter in accordance with applicable laws. All documents shall be filed by mailing or delivering them to the New Hampshire Banking Department, ATTN: Presiding Officer 10-001, 53 Regional Drive, Suite 200, Concord, NH 03301. Filing by facsimile or electronic transmission shall not be accepted.

17. The parties may submit Proposed Orders, which shall include findings of fact and conclusions of law, separately stated, no later than ten (10) days following conclusion of the hearing(s) in this matter.

18. Routine procedural inquiries may be made by telephoning Maryam Torben Desfosses, Hearings Examiner at (603)271-3561, but all other communications

1	with the Presiding Officer and with the Department shall be in writing and
2	shall be filed as provided above. Ex parte communications are forbidden by
3	statute.
4	19. A copy of this Notice of Hearing shall be mailed to all named
5	Respondents at their addresses of record and that a copy shall also be
6	delivered to Maryam Torben Desfosses, Hearings Examiner, and to the
7	Presiding Officer at the New Hampshire Banking Department.
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9	SO ORDERED.
10	/s/ Dated: <u>11/24/2010</u>
11	BANK COMMISSIONER By Robert A. Fleury, Deputy Bank Commissioner
12	by Robert R. Fledry, Deputy Bank commissioner
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