

THE STATE OF NEW HAMPSHIRE

**PETITION FOR THE REMOVAL OF  
BANK COMMISSIONER PETER C. HILDRETH  
PURSUANT TO RSA 4:1 AND RSA 383:3**

NOW COMES Governor John Lynch and Executive Councilors Raymond S. Burton, John D. Shea, Beverly A. Hollingworth, Raymond J. Wieczorek and Debora B. Pignatelli, together by and through counsel, and petition for the removal of Bank Commissioner Peter C. Hildreth pursuant to RSA 4:1 and RSA 383:3. In support of this petition, the Governor and Executive Councilors allege as follows:

**I. RELEVANT BACKGROUND**

**A. Peter C. Hildreth**

1. Peter C. Hildreth ("Hildreth") is the duly appointed Bank Commissioner, appointed by the Governor with the consent of the Executive Council pursuant to RSA 383:1. Hildreth was appointed to his first term beginning on or about September 20, 2001. His current term ends on January 1, 2013. The position of Bank Commissioner is not a classified position.

2. As Bank Commissioner, at all relevant times since September 20, 2001, Hildreth has been in charge of the New Hampshire Banking Department ("Banking Department").

3. Prior to being appointed to the position of Bank Commissioner, Hildreth was the Director of the New Hampshire Secretary of State's Bureau of Securities Regulation ("Securities Bureau") from 1992 to 2001.

**B. Financial Resources Mortgage**

4. Financial Resources Mortgage, Inc., which was previously known as Financial Resources National and Financial Resources and Assistance of the Lakes Region, Inc.,

(hereinafter referred to as "FRM"), operated a residential and commercial mortgage brokerage and lending business, based in Meredith, New Hampshire. FRM operated from in or about 1989 until November 2009.

5. At all relevant times since 1999 and through November 2009, FRM has been licensed by the Banking Department, and subject to regulation by the Banking Department under RSA 397-A and RSA 397-B.

6. Since at the latest 2005 through November 2009, FRM operated a scheme to defraud, and did defraud, investors or lenders of millions of dollars. Dozens of individuals from New Hampshire and elsewhere lost money as a result of FRM's fraudulent activities. In April 2010, one of the principals of FRM, and the principal of an affiliated entity, were indicted in the United States District Court for the District of New Hampshire and charged with mail and wire fraud. On October 4, 2010, both individuals entered guilty pleas in that criminal case.

**C. The Banking Department Failed To Take Meaningful Steps Against FRM**

7. In 1999, while Hildreth was at the Securities Bureau, he came to learn of a complaint against FRM. Hildreth contends that he learned while he was at the Securities Bureau that one of his brothers was an investor in FRM and he believed that his brother's investment created a conflict of interest for him. After Hildreth became Bank Commissioner in 2001, numerous complaints about FRM were received by the Banking Department. Hildreth contends that he again learned that one of his brothers was an investor in FRM and he believed that his brother's investment created a conflict of interest for him.

8. The Banking Department conducted audits of FRM in 2001, 2003, 2004, 2006, 2007, 2008 and 2009. These audits, as early as 2001 and throughout the relevant period, revealed that FRM lacked basic and adequate policies, procedures and controls, and maintained a

corporate culture that suggested a fundamental disregard of basic business, financial, governance and operational norms. FRM also submitted false information to the Banking Department during some of these audits.

9. Despite its discovery and acknowledgement of these deficiencies and others, and despite the Bank Commissioner's power to take further investigative and regulatory steps to safeguard the public, the Banking Department failed to take adequate measures to ensure that FRM conducted its business in a manner compliant with the public interest and with state and federal laws and regulations.

10. For his part, Hildreth absented himself, in part, from consideration of matters related to FRM as a result of his alleged conflict of interest, but did not do so in writing and did not adequately notify others within the Banking Department; failed to establish a clear line of command in his absence; despite an articulated conflict of interest nonetheless engaged in actions and discussions about FRM matters; and failed to review in a timely manner whether he continued to have a conflict of interest. These failures, together with the structure of the Banking Department controlled by Hildreth, left the Banking Department unable and/or failing to execute the decisions necessary to deal adequately with the complaints about FRM and the findings from the Banking Department's audits of FRM. In addition, after learning that he no longer had a conflict of interest, Hildreth failed to cooperate with other regulators regarding FRM, and gave testimony before a joint legislative committee inaccurately minimizing his own role with FRM. All of these failures, individually and together, support Hildreth's removal under RSA 4:1 and 383:3.

**D. Removal Statutes**

11. RSA 4:1 states in relevant part: "No state official who is not a classified employee shall be discharged or removed except for malfeasance, misfeasance, inefficiency in

office, incapacity or unfitness to perform assigned duties, or for the good of the department, agency, or institution to which such official is assigned . . . unless otherwise provided by law.”

12. RSA 383:3 states: “The governor, with the advice and consent of the council, may remove either the bank commissioner or a deputy bank commissioner at any time, for inefficiency, neglect of duty, or malfeasance in office, after hearing, with reasonable notice in writing of the charges against him.”

13. For the following reasons, the Governor and Executive Council should remove Hildreth because of his “inefficiency,” “neglect of duty” and “malfeasance” in the office of Bank Commissioner as those terms and phrase are used in RSA 4:1 and/or RSA 383:3. Hildreth’s conduct also constitutes “misfeasance,” and his removal would be “for the good of the [Banking] department,” as that term and phrase are used in RSA 4:1.

## **II. BASES FOR REMOVAL**

### **A. Hildreth Failed To Recuse Himself Clearly From FRM Matters.**

14. Hildreth claims to have recused himself from consideration of matters related to FRM due to a conflict of interest arising from either one or two of his brothers having investments in FRM. Neither brother was Hildreth’s dependent.

15. By Executive Order No. 98-1 (May 19, 1998), Governor Jeanne Shaheen established a Code of Ethics for the Executive Branch, which required “[p]ublic employees and public officials” to “avoid conflicts of interest or the appearance of a conflict of interest.” Executive Order No. 98-1 defined “conflict of interest” to mean “a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty.” It also expressly prohibited “[p]ublic employees and public officials”

from participation “in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties.”

16. Executive Order No. 98-1 was superseded by RSA 21-G:21 to 21-G:27. That statute, which went into effect January 1, 2005, as amended, in relevant part largely tracks Executive Order No. 98-1. It states that “[e]xecutive branch officials shall avoid conflicts of interest.” RSA 21-G:22. It defines a “conflict of interest” as “a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty.” RSA 21-G:21(II). It also expressly prohibits “[e]xecutive branch officials” from participation “in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties.” RSA 21-G:22.

17. Nothing in either Executive Order No. 98-1 or RSA 21-G:21, *et seq.*, requires a “public employee” or “executive branch official” to recuse himself from making decisions in a situation where a relative other than a “spouse or dependent” has an interest. Consequently, if a “public employee” or “executive branch official” believes he has a conflict of interest as a result of an interest held by a relative other than a “spouse or dependent,” it is incumbent on the individual to make that conflict of interest clearly known.

18. Once Hildreth determined that, because of the investments of one or two of his brothers in FRM, he had a conflict of interest, he was required to “avoid” that conflict of interest by notifying people within the Banking Department of his conflict and the fact that he could have no involvement in any Banking Department action with respect to FRM, and by having no involvement in any Banking Department action with respect to FRM.

19. Hildreth failed to notify the Banking Department with sufficient clarity so that others involved in oversight of FRM would be aware of his conflict of interest. Hildreth also

failed either (i) to designate anyone to act in his stead in connection with the Banking Department's licensing and regulatory oversight of FRM, or (ii) to set up any procedure within the Banking Department so that, in the event he had to recuse himself, another person would be able to exercise all of his functions.

20. These actions by Hildreth constituted "inefficiency, neglect of duty, or malfeasance in office" within the meaning of RSA 383:3.

**B. Hildreth Failed To Designate A Person To Act For Him On FRM Matters.**

21. Having determined that he needed to recuse himself from matters regarding FRM, Hildreth had an obligation to ensure that the power and discretion of the Bank Commissioner could still be exercised by another person in connection with the Banking Department's licensing and regulatory oversight of FRM.

22. Numerous powers of the Banking Department are vested in or imposed upon the Bank Commissioner by statute.

23. The Bank Commissioner is authorized by statute to "delegate to deputies, assistants, examiners, or employees of the banking department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the commissioner." RSA 383:7-a(I). However, at all relevant times, RSA 383:7-a has required that, if the commissioner is going to delegate duties and responsibilities, "[t]he delegation of duties and responsibilities shall be made by the commissioner in writing, and shall state an effective date," RSA 383:7-a(III), and "shall expire one year from the effective date of the delegation unless renewed by the commissioner." RSA 383:7-a(IV).

24. After determining that he had a conflict of interest, Hildreth did not recuse himself in writing from involvement with FRM. He also did not delegate his duties with respect to FRM to another person in writing and with an effective date, nor did he renew any such delegation for any period beyond one year.

25. As a result, Hildreth left the Banking Department unable to exercise the full panoply of licensing and regulatory functions with respect to FRM. Similarly, the Banking Department was unable to exercise the Commissioner's discretion to share information with other regulatory agencies, including the Securities Bureau, pursuant to RSA 397-A:12(V-a).

25. These actions by Hildreth constituted "inefficiency, neglect of duty, or malfeasance in office" within the meaning of RSA 383:3.

**C. Hildreth Continued To Have Involvement With FRM Matters Despite His Alleged Recusal.**

26. Despite his alleged recusal from matters related to FRM, Hildreth nonetheless continued to receive information about FRM and continued to take steps related to FRM, including but not limited to speaking and corresponding with others about FRM, receiving complaints about FRM, signing a subpoena regarding FRM, and suggesting courses of action to be taken with respect to FRM.

27. These actions by Hildreth violated Executive Order No. 98-1 and/or RSA 21-G:21, *et seq.*, because he did not take steps to "avoid conflicts of interest." They also constitute "inefficiency, neglect of duty, or malfeasance in office" within the meaning of RSA 383:3.

**D. Hildreth Failed To Review Regularly Whether He Remained Conflicted; Consequently, Hildreth Unnecessarily Remained "Recused" Until FRM Went Out Of Business In November 2009, Even Though His Brothers' Investments in FRM Were Repaid Earlier.**

28. Hildreth's only articulated reason for his unwritten "recusal" from FRM matters before the Banking Department was his claimed conflict of interest as a result of the investment of one or two of his brothers in FRM. That conflict ended when his brothers' investment in FRM was repaid.

29. On information and belief, the investments in FRM by Hildreth's brother or brothers was or were repaid prior to November 2009.

30. Hildreth did not take reasonable steps to determine whether his articulated reason for remaining "recused" from FRM matters -- his brothers' investments in FRM -- remained. Consequently, Hildreth remained "recused" for longer than was necessary or appropriate.

31. These actions by Hildreth, remaining unnecessarily "recused," constituted "inefficiency, neglect of duty, or malfeasance in office" within the meaning of RSA 383:3.

**E. Hildreth's Organization Of The Banking Department Resulted In Insufficient Oversight Of FRM And Failure To Take Action Against FRM When Substantial Noncompliance With State And Federal Law Was Found.**

32. At all times after becoming Bank Commissioner, Hildreth was responsible for the manner in which the Banking Department functioned. Hildreth undertook a reorganization of the Banking Department, and was responsible for the policies and procedures employed by the Banking Department.

33. The Banking Department's audits of FRM identified in paragraph 8 above, which were conducted pursuant to Banking Department policies, revealed that FRM was not compliant with state and federal laws and regulations in important respects.

34. As a result of a lack of internal oversight, and/or as a result of insufficient internal staffing or resource allocation, the Banking Department failed to take action on the audits' reasonable recommendations to the legal department for action against FRM.

35. The operation of the Banking Department by Hildreth to permit such inaction in the face of substantial issues detected in the audits of FRM constituted "inefficiency, neglect of duty, or malfeasance in office" within the meaning of RSA 383:3.

**F. After Determining That He Did Not Have A Conflict, Hildreth's Conduct With Respect to FRM Constituted Inefficiency, Neglect Of Duty Or Malfeasance In Office.**

36. After determining that he did not have a conflict because his brothers' investments had been repaid by FRM, Hildreth again involved himself in FRM matters before the Banking Department.

37. Despite the significance of the harm caused by FRM, Hildreth failed to cooperate with the Securities Bureau in a timely manner to determine the scope and extent of the FRM conduct and to make documents available so that the New Hampshire regulatory agencies could work cooperatively.

38. Hildreth also testified before the Joint Legislative Committee to Review the State's Regulatory Oversight over Financial Resources Mortgage, Inc. During his testimony, Hildreth inaccurately minimized his involvement with FRM, and promised publicly to post all Banking Department documents regarding FRM on the Banking Department website, but did not do so.

39. These actions constituted "inefficiency, neglect of duty, or malfeasance in office" within the meaning of RSA 383:3.

**III. CONCLUSION**

For these reasons, on behalf of the Governor and the Executive Councilors, I respectfully request that the Governor and Executive Council:

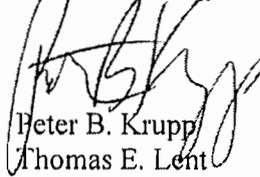
- a) Accept this Petition for Removal;
- b) Schedule a hearing pursuant to RSA 4:1 and 383:3;
- c) Vote in favor of removing Peter C. Hildreth from the office of Bank Commissioner; and
- d) Grant such further relief as may be appropriate under law.

Respectfully submitted,

GOVERNOR JOHN LYNCH

EXECUTIVE COUNCILORS  
RAYMOND S. BURTON,  
JOHN D. SHEA,  
BEVERLY A. HOLLINGWORTH,  
RAYMOND J. WIECZOREK, and  
DEBORA B. PIGNATELLI,

By their attorneys,



Peter B. Krupp  
Thomas E. Lent  
Sara A. Laroche  
Lurie & Krupp, LLP  
One McKinley Square  
Boston, MA 02109  
Tel: 617-367-1970

Dated: October 6, 2010

Special Counsel to the Governor and  
Executive Council