

SB 180-FN-A – AS AMENDED BY THE SENATE

03/14/13 0772s

2013 SESSION

13-0916

01/10

SENATE BILL 180-FN-A

AN ACT establishing a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud, continually appropriating a special fund and making an appropriation therefor.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bragdon, Dist 11

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill establishes a process for restitution assistance for victims of the Financial Resources Mortgage (FRM) fraud. Under this bill, the FRM recovery fund committee shall award assistance from the FRM recovery fund for such victims.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT establishing a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud, continually appropriating a special fund and making an appropriation therefor.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; FRM Recovery Fund. Amend RSA by inserting after chapter 359-L the following new chapter:

CHAPTER 359-M
FRM RECOVERY FUND

359-M:1 Definitions. In this chapter:

- I. "Claimant" means a person who is a victim of the Financial Resources Mortgage fraud and who has filed a complete application for recovery assistance under this chapter.
- II. "Committee" means the FRM recovery fund committee established in RSA 359-M:4.
- III. "Financial Resources Mortgage" means Financial Resources Mortgage, Inc., C L and M, Inc., and any predecessor, successor, or affiliated entities, and any entities established by, through or with Scott Farah or Donald Dodge, through which moneys of Financial Resources Mortgage, Inc., C L and M, Inc., and any predecessor, successor, or affiliated entities passed.
- IV. "Financial Resources Mortgage fraud" means fraudulent acts committed by Financial Resources Mortgage or its principals where loans brokered by or serviced by Financial Resources Mortgage were used for purposes other than the funding of commercial loans.
- V. "Fund" means the FRM recovery fund established in RSA 359-M:2.
- VI. "Person" means an individual, corporation, partnership, association, joint stock company, unincorporated organization, or any other entity.
- VII. "Qualifying claimant" means a person who suffered financial losses as a result of the Financial Resources Mortgage fraud and is a claimant eligible for recovery assistance under this chapter.
- VIII. "Recovery assistance" means payments from the fund to persons who suffered financial losses as a result of the Financial Resources Mortgage fraud.
- IX. "Victim" means a person who suffered monetary injury as a result of the Financial Resources Mortgage fraud.

359-M:2 FRM Recovery Fund Established.

- I. There is hereby established the FRM recovery fund. The fund shall be nonlapsing and continually appropriated to the committee. The fund shall consist of moneys appropriated by the general court.
- II. After deducting administrative costs, the fund shall be used for awarding recovery assistance pursuant to this chapter.
- III. The total amount in the fund less costs of administration shall be distributed on a pro rata basis to qualifying claimants annually on December 31 until all such claims are satisfied.

359-M:3 Eligibility for Recovery Assistance.

- I. Except as otherwise provided in this chapter, a claimant shall be eligible for recovery assistance under this chapter if the claimant:

- (a) Submits all supplemental documents as requested by the committee.
- (b) Can demonstrate loss, to the committee’s satisfaction, due to the Financial Resources Mortgage fraud.
- (c) Meets all other requirements of this chapter, as determined by the committee.

II. In addition to a qualifying claimant and except as otherwise provided in this chapter, a surviving spouse or surviving child of a qualifying claimant shall be eligible for recovery assistance under this chapter.

359-M:4 Committee Established.

I. There is established the FRM recovery fund committee. The committee shall consist of the following members:

- (a) The commissioner of the banking department, or designee.
- (b) The commissioner of the insurance department, or designee.
- (c) The attorney general, or designee.
- (d) The secretary of state, or designee.

II. The first meeting of the committee shall be held within 45 days of the effective date of this section and shall be called by the secretary of state or designee. The committee chairperson shall be chosen from among the members.

III. The committee shall review applications for assistance submitted pursuant to this chapter and make awards of assistance in accordance with the procedures of this chapter.

IV. In the event of a tie vote on any matter, the chairperson’s vote shall break the tie.

V. The committee shall make an annual report, beginning on November 1, 2013, relative to its work to the governor, the president of the senate, and the speaker of the house of representatives.

359-M:5 Recovery Assistance.

I. A victim eligible for recovery assistance under RSA 359-M:3 may file an application for recovery assistance with the committee on the following form:

Financial Resources Mortgage, Inc and CL&M, Inc. Victims Indemnification Application

Name _____

Address _____

Phone _____

E-mail _____

Social Security No. _____

I.) Proof of Claim Federal Bankruptcy Court Case 09-14565-JMD and 09-14566-JMD date filed _____

Loans or Mortgages claimed (copy attached)

1. _____ Amount \$ _____

2. _____ Amount \$ _____

3. _____ Amount \$ _____

4. _____ Amount \$ _____

5. _____ Amount \$ _____

6. _____ Amount \$ _____

7. _____ Amount \$ _____

8. _____ Amount \$ _____

9. _____ Amount \$ _____

10. _____ Amount \$ _____

Total Proof of Claim Amount \$ _____

II.) Were you a defendant in case no. 09-1184-JMD? Yes No

Were you dismissed from the case? Yes No

III.) Did you settle with the Trustee? Yes No

Did you make a payment to the Trustee for the benefit of the bankruptcy estates to settle with the Trustee?
Yes No Amount \$ _____

IV.) List any additional payments to the trustee as a result of any mortgage foreclosed, sold, or repaid as a condition of your settlement. Example: Agreed to split proceed 80/20 with Trustee.

1. _____ Amount \$ _____

2. _____ Amount \$ _____

3. _____ Amount \$ _____

4. _____ Amount \$ _____

5. _____ Amount \$ _____

Post settlement payments to Trustee Amount \$ _____

V.) Did you retain 100% ownership of any mortgages as a result of settlement? Yes (list below) No

- 1. _____ Amount \$ _____
- 2. _____ Amount \$ _____
- 3. _____ Amount \$ _____
- 4. _____ Amount \$ _____
- 5. _____ Amount \$ _____

Total Retained 100% ownership \$ _____

VI.) List any payment from the Trustee on any mortgage he or she foreclosed on, sold, or received repayment of principle and from which proceeds were agreed to be split with you as a result of settlement.

- 1. _____ Amount \$ _____
- 2. _____ Amount \$ _____
- 3. _____ Amount \$ _____
- 4. _____ Amount \$ _____
- 5. _____ Amount \$ _____

Total Split Proceeds received from Trustee post settlement \$ _____

VII.) Final Distribution of Bankruptcy Estate by Trustee received by you \$ _____

VIII.) Total Interest received from FRM or CL&M January 2006

through November 2009 \$ _____

(attach form 1040 and Schedule B, Interest and Dividends, for 2006-2009)

Calculate Loss:

A. Total Section I. Proof of Claim \$ _____

Total Section III Settlement Payment \$ _____

Total Section IV. Proceed split payment to Trustee \$ _____

Total A. \$ _____

B. Total Section V. 100% Retained Mortgages \$ _____

Total Section VI. Proceed Split receipt from Trustee \$_____

Total Section VII. Final Distribution from Trustee \$_____

Total Section VIII. Interest Received \$_____

Total of any other awards not otherwise accounted for \$_____

Total B. \$_____

C. Total A minus Total B.

Allowable Loss \$_____

Signature_____

Date_____

Signed under penalty of perjury

For administration purposes only

Grand Total All Losses submitted \$_____

(name)_____ allowable loss submitted \$_____

Percent of Grand Total submitted _____%

II. The complete application shall be received not more than 180 days after the effective date of this section. An extension of time may be granted for good cause shown by the claimant. However, an application that is received more than 270 days after the effective date of this section shall not be accepted. The committee shall send a notice regarding the process for recovery under this chapter to the last known address of potential claimants.

III. All applications filed in compliance with this chapter shall be accepted. Processing of an application shall begin upon receipt of a complete application. All applications shall be reviewed by the committee to ensure that the applications are complete. If an application is not complete, it shall be returned to the claimant with a brief statement of the additional information required. The application shall be denied if the applicant does not furnish additional information or additional time is not granted for good cause.

IV. The committee shall determine the amount of loss of original investments, if any, of each claimant and the pro rata share to be distributed to a claim demonstrating loss.

V. Recovery assistance shall be limited to the amount of the claimant's original investment.

VI. The committee may consider individual claims filed by persons owning a joint interest that was subject to loss due to the Financial Resources Mortgage fraud, but any recovery awarded shall only be to the extent of each individual claimant's original investment.

359-M:6 Awards Under This Chapter Set Off Against Any Other Recovery.

I. The amount of any award made under this chapter shall be set off against any other recovery sources, including, but not limited to awards from private suits, arbitration, bankruptcy court awards or settlements, or other sources of recovery.

II. In the event a qualifying claimant receives an award from a recovery source listed in paragraph I subsequent to the filing of a claim under this chapter, the claimant shall immediately notify the committee of the award. The committee shall then modify the claimant's award and pro rata share by offsetting such award against the claimant's award under this chapter.

359-M:7 Recovery Assistance Prohibited. Recovery assistance shall not be awarded if the committee determines the claimant:

I. Sustained the monetary injury as a result of participating or assisting in or attempting to commit or committing financial fraud with Financial Resources Mortgage; or

II. Profited or would have profited from the financial fraud of Financial Resources Mortgage.

359-M:8 Award Not Subject to Other Processes. An award made under this chapter shall not be subject to execution, attachment, garnishment, or other process. A claimant convicted of forgery, fraud, or deception in connection with a claim under this chapter shall forfeit an award paid to the claimant under this chapter. The attorney general may file a civil action to recover funds against such a claimant.

359-M:9 Liability of State. The state shall not be liable for any written determination made under this chapter except to the extent that money is available in the fund on the date the award is computed.

359-M:10 Claims Prior to January 1, 2006. Claims for restitution assistance shall not be accepted for any losses that occurred prior to January 1, 2006 due to financial fraud.

2 New Subparagraph; FRM Recovery Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (310) the following new subparagraph:

(311) Moneys deposited under the FRM recovery fund, established in RSA 359-M:2.

3 Repeal. The following are repealed:

I. RSA 359-M, relative to a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud.

II. RSA 6:12, I(b)(311), relative to the FRM recovery fund.

4 Contingent Repeal. Section 3 of this act shall take effect on the date the FRM recovery fund committee certifies to the secretary of state that the last payment was made in accordance with RSA 359-M as inserted by section 1 of this act. Any moneys in the FRM recovery fund established in RSA 359-M:2 as inserted by section 1 of this act shall be returned to the general fund.

5 Appropriation. The sum of \$3,000,000 is hereby appropriated for each fiscal year to the committee established in RSA 359-M:4 to be deposited in the fund established in RSA 359-M:2 for the purposes of recovery assistance under RSA 359-M as inserted by section 1 of this act until all claims have been satisfied. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

6 Effective Date.

I. Section 3 of this act shall take effect as provided in section 4 of this act.

II. The remainder of this act shall take effect 60 days after its passage.

LBAO

13-0916

Amended 03/18/13

SB 180 FISCAL NOTE

AN ACT establishing a recovery fund for victims of the Financial Resources Mortgage (FRM) fraud, continually appropriating a special fund and making an appropriation therefor.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, **as amended by the Senate (Amendment #2013-0772s)**, as it is awaiting information from the Department of Justice, Insurance Department, Banking Department and Department of State. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.