

## **ADMONITION NO. 00-21**

### **CLASSIFICATION:**

Failure to represent competently [Mass. R. Prof. C. 1.1]

### **SUMMARY:**

On February 16, 1999, the respondent as counsel to the lender conducted a commercial real estate closing. The borrowers were under time pressure to close because they required the funds by a date certain to settle a pending civil law suit. At the closing, the borrowers executed a promissory note, mortgage, and other loan documents. Despite the fact that he had not received the loan proceeds, the respondent subsequently recorded the mortgage and delivered the original promissory note to the lender. The funds were never made available and the borrowers were forced to hire counsel to pursue their civil remedies.

The respondent's conduct was in violation of the "good funds" statute, G.L. C. 183, § 63B, which prohibits recording a real estate mortgage until the proceeds of the loan in the form of good funds are paid to either the mortgagor, the mortgagor's attorney, or the mortgagee's attorney. In mitigation, the borrowers may have agreed that the loan would be funded after it went on record. Regardless, the respondent admits that he did not advise the parties that he could not lawfully go to record until the loan was funded. He acknowledges that, in his attempt to expedite matters for the borrowers, he made a serious error of judgment.

The respondent failed to provide competent representation, in violation of Mass. R. Prof. C. 1.1. However, while the respondent's conduct had the potential for harm, no harm ultimately resulted. A discharge of the mortgage was obtained and recorded.

The respondent was admitted to practice in 1985 and has no prior discipline. He received an admonition for his conduct, conditioned upon attendance at a CLE course designated by Bar Counsel.