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AN ACT

RELATING TO REAL ESTATE; REVISING DEADLINES FOR THE FUNDING
OF REAL ESTATE TRANSACTIONS; AMENDING AND REPEALING SECTIONS
OF THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-21-2 NMSA 1978 (being Laws 1983,
Chapter 86, Section 2, as amended) is amended to read:

"58-21-2. DEFINITIONS.--As used in the Mortgage Loan
Company and Loan Broker Act:

A. "affiliate" means a person who, directly or
indirectly, through one or more intermediaries, controls or
is controlled by or is under common control with another
person;

B. "closing agent" means a person, including a
title insurance agent or title insurance company, that acts
in the normal course of business in a fiduciary capacity as a
disinterested third party for the seller and buyer of real
property for the purpose of consummating a sale of real
property, including the performance of the following
functions:

(1) preparation of deeds, mortgages,
promissory notes, deeds of trust, real estate contracts,
assignments or other documents incidental to the sale as
permitted by law;

1 (2) calculations and disbursements of
2 prorated taxes, insurance premiums, utility bills and other
3 charges incidental to the sale;

4 (3) preparation of sellers' and buyers'
5 closing statements;

6 (4) supervision of signing of documents;

7 (5) collection and disbursement of down
8 payments, commissions of real estate licensees, fees and
9 other charges pursuant to a sales agreement; and

10 (6) recordation of documents;

11 C. "division" means the financial institutions
12 division of the regulation and licensing department;

13 D. "director" means the director of the financial
14 institutions division of the regulation and licensing
15 department;

16 E. "dwelling" means a residential structure,
17 including a home, individual condominium unit, manufactured
18 home or modular home, that contains one to four units and is
19 permanently attached to real property;

20 F. "lender" means a person or government agency
21 making a mortgage loan;

22 G. "loan broker" means any person who acts as a
23 finder or agent of a lender or borrower of money for the
24 purpose of procuring a mortgage loan, or both;

25 H. "mortgage loan" means a loan secured by a

1 dwelling permanently affixed to real property;

2 I. "mortgage loan company" means a person who,
3 directly or indirectly:

4 (1) holds himself out as being able to serve
5 as an agent for any person in an attempt to obtain a mortgage
6 loan;

7 (2) holds himself out as being able to serve
8 as an agent for a person who makes mortgage loans; or

9 (3) holds himself out as being able to make
10 mortgage loans; and

11 J. "net loan funds" means the mortgage loan
12 amounts specified in the note and mortgage less
13 lender-retained fees, as specified in the lender's
14 instruction to the closing agent."

15 Section 2. Section 58-21-23.2 NMSA 1978 (being Laws
16 2005, Chapter 191, Section 3) is amended to read:

17 "58-21-23.2. FUNDING OF REAL ESTATE TRANSACTIONS--
18 ENFORCEMENT.--

19 A. Unless the net loan funds necessary to complete
20 a purchase of real property have been previously delivered to
21 the seller or to the closing agent, a lender shall deliver
22 the required net loan funds within two business days of the
23 time that the lender deems the closing agent has fulfilled
24 the requirements of the closing agent's duties, except for
25 the recordation of documents, and shall:

1 (1) authorize the closing agent to record
2 with the county clerk all documents necessary to complete the
3 real estate transaction and release the proceeds of the real
4 estate transaction in accordance with agreed upon escrow
5 instructions;

6 (2) advise the closing agent of any funding
7 conditions, as set forth in the lender's escrow instructions,
8 that have not been satisfied and instruct the closing agent
9 in writing what is to be done with any of the lender's funds
10 held in escrow; or

11 (3) advise the closing agent that the
12 documentation for the real estate transaction does not
13 satisfy the lender's escrow instructions, specify the manner
14 in which that documentation does not satisfy those
15 instructions and instruct the closing agent in writing what
16 is to be done with any of the lender's funds held in escrow.

17 B. In the event a lender does not comply with the
18 requirements of Subsection A of this section, unreasonably
19 refuses to approve the documentation necessary to complete a
20 real estate action or unreasonably delays authorization of
21 the recordation of closing documents and release of proceeds
22 of a real estate transaction, the director of the division
23 may, upon receipt of a complaint and in accordance with the
24 procedures set forth in the Mortgage Loan Company and Loan
25 Broker Act, suspend or revoke any state registration or

1 license issued to the lender for a period not to exceed one
2 year."

3 Section 3. REPEAL.--Section 58-21-23.1 NMSA 1978 (being
4 Laws 2005, Chapter 191, Section 2) is repealed.

5 Section 4. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2007. _____

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