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FISCAL IMPACT REPORT

ORIGINAL DATE 2/9/07

SPONSOR Boitano LAST UPDATED _____ HB _____

SHORT TITLE Real estate Transaction Funding Deadlines SB 923

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 923 would amend NMSA Section 58-21-23.2 of the Mortgage Loan Company and Loan Broker Act to require that a lender deliver the required "net loan funds" (the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent) within two business days of the time that the lender deems the closing agent has fulfilled the requirements of the closing agent's duties, except for the recordation of documents.

The bill also eliminates the two business day time period from receipt of documentation specified in current law for a lender to authorize or advise the closing agent with regard to recording documents or releasing funds.

The bill also repeals NMSA Section 58-21-23.1 which provides that a closing agent for any purchase of real property shall not require or permit any party to such a transaction to execute documentation necessary to finalize that transaction unless the consideration necessary to complete that transaction has been previously delivered to the seller or to the closing agent

SIGNIFICANT ISSUES

Current law requires a lender to deliver loan funds to a closing agent in an amount sufficient to complete the purchase of real property at the same time the lender provides to the closing agent the documentation to be reviewed and executed by the parties to the real estate transaction. NMSA Section 58-21-23.2A. This bill would require the delivery of funds from a lender within two business days of the time that the lender deems the closing agent has fulfilled the requirements of the closing agent's duties, except for the recordation of documents.

Current law also requires a lender, within two business days from the time the lender receives copies of all required documentation to the real estate transaction, to authorize the closing agent to record with the county clerk all documents necessary to complete the real estate transaction and to release the proceeds of the real estate transaction in accordance with agreed upon escrow instructions; advise the closing agent of any funding conditions that have not been satisfied and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow; or advise the closing agent that the documentation for the real estate transaction does not satisfy the lender's escrow instructions, specify the manner in which that documentation does not satisfy those instructions and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow. While maintaining those requirements, the bill appears to eliminate the requirement that those actions be performed within two business days from receipt by a lender of required documentation.

TECHNICAL ISSUES

If the intent of the bill is to require a lender to advise the closing agent as to the sufficiency of documentation and as to the release of funds within two business days from the time the lender decides that the closing agent has fulfilled his duties, then the bill should clearly state that those responsibilities also fall within that time period.

OTHER SUBSTANTIVE ISSUES

The new language appears to allow lenders to deliver net loan funds within two business days of the time that the lender deems the closing agent has fulfilled the requirements of the closing agent's duties, except for the recordation of documents

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Lenders will continue to be required to provide consideration in an amount sufficient to complete the purchase of real property at the same time the lender provides to the closing agent documentation to be reviewed and executed by the parties to the real estate transaction.

CS/mt