

AN ACT

RELATING TO FINANCING; CHANGING CERTAIN PROVISIONS OF THE
LOW-INCOME HOUSING TRUST ACT AND THE LAND TITLE TRUST FUND
ACT TO CLARIFY EXISTING LAW AND PROVIDE FOR MORE EFFECTIVE
USE OF THE FUNDS GENERATED.

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

Section 1. Section 58-18B-3 NMSA 1978 (being Laws
1994, Chapter 146, Section 3, as amended) is amended to read:

"58-18B-3. DEFINITIONS.--As used in the Low-Income
Housing Trust Act:

A. "appropriate financial institution service
charges and fees" means those service charges and fees that a
financial institution charges its customers on demand deposit
accounts;

B. "division" means the financial institutions
division of the regulation and licensing department;

C. "escrow closing agent" means an escrow agent
other than a title company that acts in the normal course of
business as the agent of the seller and buyer of real estate
for the purpose of consummating a sale, 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;

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

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

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, realtors' commissions, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

D. "escrow servicing agent" means any person who in the normal course of business collects and disburses funds received from real estate-related financing instruments on behalf of a lender or borrower;

E. "first-time home buyer" means:

(1) an individual or the individual's spouse who has not owned a home other than a manufactured home during the three-year period prior to the purchase of a home; or

(2) any individual who is a displaced homemaker or a single parent;

F. "fund" means the land title trust fund created pursuant to the provisions of the Land Title Trust Fund Act;

G. "low-income persons" means a household

consisting of a single individual or a family or unrelated individuals living together when the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development and as adjusted for family size, or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;

H. "person" means an individual or any other legal entity; and

I. "property manager" means a person who acts in the normal course of business as the agent for the owner of real property for the purpose of property rental, leasing and management."

Section 2. Section 58-18B-5 NMSA 1978 (being Laws 1994, Chapter 146, Section 10) is amended to read:

"58-18B-5. TRUST ACCOUNTS--ESCROW ACCOUNTS--SPECIAL ACCOUNTS--POOLED INTEREST-BEARING ACCOUNTS--DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

A. Every real estate broker who maintains a trust or escrow account as required pursuant to the provisions of Subsection H of Section 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. Every escrow closing agent that maintains a trust account or escrow account pursuant to the provisions of Section 58-22-20 NMSA 1978 shall maintain a pooled interest-bearing escrow account and shall deposit all customer funds into that account, except for funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

C. The interest earned on customer funds deposited in a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section, net of any appropriate financial institution service charges and fees, shall be remitted monthly or quarterly from the financial institution in which the account is maintained to the fund. The account agreement between the depositor and the financial institution shall expressly provide for the

required remittance of interest.

D. The provisions of this section do not relieve a real estate broker or escrow closing agent from any obligations under other laws to safeguard and account for funds in a pooled interest-bearing account.

E. The pooled interest-bearing escrow accounts authorized to be established pursuant to the provisions of this section shall be interest-bearing demand accounts from which withdrawals and transfers can be made without delay, subject only to any notice period the depository institution is required to observe by law or regulation.

F. The director of the division shall adopt rules to carry out the provisions of the Low-Income Housing Trust Act.

G. A person establishing and maintaining a pooled interest-bearing escrow account required by the provisions of Subsection A or B of this section is not required to make disclosure to a person whose funds are placed in the account of the disposition of interest earned on the account.

H. An escrow servicing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

I. A property manager shall not be required to establish and maintain a pooled interest-bearing escrow

account pursuant to the provisions of Subsection A or B of this section.

J. Real estate brokers and escrow closing agents shall enroll and instruct participating financial institutions on how to establish a pooled interest-bearing escrow account and how to authorize remittance of accrued interest less service charges to the fund.

K. A real estate broker or an escrow closing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section if no financial institution in the community where the broker or agent maintains his principal place of business provides or offers that type of account."

Section 3. Section 58-18B-6 NMSA 1978 (being Laws 1994, Chapter 146, Section 11) is amended to read:

"58-18B-6. POOLED INTEREST-BEARING ESCROW ACCOUNTS AUTHORIZED TO BE MADE AVAILABLE--COMPUTATION OF INTEREST--REPORTS.--

A. Any depository institution regulated by the division that maintains trust or escrow accounts for customers may establish and make available pooled interest-bearing accounts. Interest on a pooled interest-bearing account shall be computed on the daily collected balance of the account or as otherwise computed in accordance with the

institution's standard accounting practices.

B. Any depository institution participating in the program and making a remittance of interest to the fund pursuant to the provisions of Section 58-18B-5 NMSA 1978 shall, at the time of remittance, transmit a report to the trustee showing:

(1) the name of the account holder for whom the remittance is sent;

(2) the rate of interest used to compute the earned interest;

(3) the amount, if any, of appropriate financial institution service charges and fees deducted; and

(4) the account balance as of the ending date of the reporting period.

C. Remittances to the fund shall be made at least quarterly, no later than the tenth day of the month.

D. A copy of the report required to be made pursuant to the provisions of Subsection B of this section shall be sent to the person in whose name the account is maintained."

Section 4. Section 58-18B-7 NMSA 1978 (being Laws 1994, Chapter 146, Section 12) is amended to read:

"58-18B-7. USE OF MONEY FROM FUND.--Money from the fund and other sources shall be used in accordance with the provisions of the Land Title Trust Fund Act."

Section 5. Section 58-28-3 NMSA 1978 (being Laws 1997, Chapter 118, Section 3) is amended to read:

"58-28-3. LAND TITLE TRUST FUND CREATED.--The "land title trust fund" is created. The New Mexico mortgage finance authority shall be the trustee for the fund. The trustee shall deposit in the fund money received by it pursuant to the Low-Income Housing Trust Act."

Section 6. Section 58-28-4 NMSA 1978 (being Laws 1997, Chapter 118, Section 4) is amended to read:

"58-28-4. TRUST ACCOUNTS--ESCROW ACCOUNTS--POOLED INTEREST-BEARING TRANSACTION ACCOUNTS--DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

A. A title company that maintains one or more trust accounts or escrow accounts into which customer funds are deposited for use in the purchase, sale or financing of real property located in New Mexico may maintain one or more pooled interest-bearing transaction accounts and may deposit customer funds into those accounts, except for funds required to be deposited into interest-bearing accounts or investments under instructions from one or more of the parties to a transaction that provide for the payment of interest to be earned on the deposited funds to a person other than the title company. A pooled interest-bearing transaction account established pursuant to the provisions of this section shall be maintained in the name of the title company, but the

trustee shall be named and shown as the beneficial owner of the account income or interest. A title company maintaining one or more pooled interest-bearing transaction accounts shall not be paid or receive any interest earned on funds deposited in the accounts except for the purpose of remitting net earned interest to the trustee pursuant to the provisions of this section.

B. The interest earned on customer funds deposited in a pooled interest-bearing transaction account pursuant to the requirements of Subsection A of this section, net of any service charges and fees that a depository institution charges to regular, non-title company depositors and net of any reasonable charge for preparation and transmittal of any required report pursuant to the provisions of Subsection F of this section, shall be remitted monthly or quarterly either directly to the fund or to the title company for its remittance to the fund. Alternatively, the depository institution may credit the title company account with the net interest earned either monthly or quarterly. Interest accrued after deducting the allowable charges and fees shall be treated as interest earned by the trustee and reported as such by the depository institution.

C. The provisions of this section shall not change existing duties or obligations of a title company under other laws to safeguard and account for funds held for

customers.

D. Funds in each pooled interest-bearing transaction account shall be subject to withdrawal upon request and without delay, subject only to the notice period the depository institution is required to observe by law or regulation.

E. The rate of interest payable on a pooled interest-bearing transaction account shall not be less than the rate customarily paid by the depository institution to regular, non-title company depositors for similar accounts. Interest shall be computed in accordance with the depository institution's standard accounting practice. Higher rates offered by the depository institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by the title company on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal, subject only to the notice period the depository institution is required to observe by law or regulation.

F. A depository institution or title company making a remittance of interest to the fund shall at the time of the remittance transmit a report to the trustee for each account from which remittance is made showing:

- (1) the name of the title company

maintaining the account from which remittance is made;

(2) the rate of interest used to compute the earned interest and the amount of earned interest;

(3) the amount, if any, of depository institution service charges and fees deducted and any charge for the preparation and transmittal of the report; and

(4) the account balance as of the ending date of the reporting period.

G. If the depository institution remits to the title company or credits the title company account, it shall make the remittance or credit no later than ten days after the statement cutoff for that account. The title company shall remit to the fund and shall send the report with the remittance no later than thirty days after receipt of the remittance or credit by the depository institution.

H. Remittances to the fund shall be made at least quarterly, no later than ten days after the statement cutoff for that account if made by the depository institution and no later than thirty days after receipt of remittance or credit from the depository institution if made by the title company.

I. The division shall adopt and promulgate rules and regulations regarding the obligations of depository institutions pursuant to the provisions of the Land Title Trust Fund Act and the Low-Income Housing Trust Act."

APPROPRIATION.--On July 1, 1999, the balance in the low-income housing trust fund shall be transferred and deposited in the land title trust fund.

Section 8. REPEAL.--Sections 58-18B-4, 58-18B-8, 58-18B-9 and 58-18B-11 NMSA 1978 (being Laws 1994, Chapter 146, Sections 9, 13, 14 and 16) are repealed.

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____