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SENATE BILL 652

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Lee Rawson

AN ACT

**RELATING TO REAL ESTATE TRANSACTIONS; ESTABLISHING DEADLINES
FOR THE FUNDING OF REAL ESTATE TRANSACTIONS; PROVIDING FOR
ENFORCEMENT; AMENDING AND ENACTING SECTIONS OF THE MORTGAGE
LOAN COMPANY AND LOAN BROKER ACT; MAKING AN APPROPRIATION.**

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 by Laws 2001, Chapter 251,
Section 1 and by Laws 2001, Chapter 264, Section 1) 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;**

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underscored material = new
[bracketed material] = delete

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

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

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

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

16 (4) supervision of signing of documents;

17 (5) collection and disbursement of down
18 payments, commissions of real estate licensees, fees and other
19 charges pursuant to a sales agreement; and

20 (6) recordation of documents;

21 ~~[B.]~~ C. "division" means the financial institutions
22 division of the regulation and licensing department;

23 ~~[C.]~~ D. "director" means the director of the
24 financial institutions division of the regulation and licensing
25 department;

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[bracketed material] = delete

1 ~~[D.]~~ E. "dwelling" means a residential structure,
2 including a home, individual condominium unit, manufactured
3 home or modular home, that contains one to four units and is
4 permanently attached to real property;

5 F. "lender" means a person or government agency
6 making a real property loan or any assignee or transferee, in
7 whole or in part, of such a person or agency;

8 ~~[E.]~~ G. "loan broker" means any person who acts as
9 a finder or agent of a lender or borrower of money for the
10 purpose of procuring a mortgage loan, or both;

11 ~~[F.]~~ H. "mortgage loan" means a loan secured by a
12 dwelling permanently affixed to real property; ~~[and~~

13 ~~G.]~~ I. "mortgage loan company" means a person who,
14 directly or indirectly:

15 (1) holds himself out as being able to serve
16 as an agent for any person in an attempt to obtain a mortgage
17 loan;

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

20 (3) holds himself out as being able to make
21 mortgage loans; and

22 J. "real property loan" means a loan, mortgage,
23 advance or credit sale secured by a lien on real property, the
24 stock allocated to a dwelling unit in a cooperative housing
25 corporation or a mobile home, whether real or personal

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1 property. "

2 Section 2. A new section of the Mortgage Loan Company and
3 Loan Broker Act is enacted to read:

4 "[NEW MATERIAL] EXECUTION OF DOCUMENTATION FOR REAL ESTATE
5 TRANSACTION. --A closing agent for any purchase of real property
6 shall not require or permit any party to such a transaction to
7 execute documentation necessary to finalize that transaction
8 unless the consideration necessary to complete that transaction
9 has been previously delivered to the seller or to the closing
10 agent. "

11 Section 3. A new section of the Mortgage Loan Company and
12 Loan Broker Act is enacted to read:

13 "[NEW MATERIAL] FUNDING OF REAL ESTATE TRANSACTIONS--
14 ENFORCEMENT. --

15 A. Unless the consideration necessary to complete a
16 purchase of real property has been previously delivered to the
17 seller or to the closing agent, a lender shall comply with the
18 following:

19 (1) funds in an amount sufficient to complete
20 the purchase of real property shall be provided to the closing
21 agent at the same time the lender provides to the closing agent
22 the documentation to be reviewed and executed by the parties to
23 the real estate transaction; and

24 (2) within two business days from the time the
25 lender receives copies of all previously required documentation

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underscored material = new
[bracketed material] = delete

1 to the real estate transaction, including documentation
2 executed by the parties to that transaction, the lender shall:

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

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

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

19 B. In the event a lender does not comply with the
20 requirements of Subsection A of this section, unreasonably
21 refuses to approve the documentation necessary to complete a
22 real estate action or unreasonably delays authorization of the
23 recordation of closing documents and release of proceeds of a
24 real estate transaction, the director of the division may, upon
25 receipt of a complaint and in accordance with the procedures

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1 set forth in the Mortgage Loan Company and Loan Broker Act,
2 suspend or revoke any state registration or license issued to
3 the lender for a period not to exceed one year. "

4 Section 4. APPROPRIATION. -- Fifty thousand dollars
5 (\$50,000) is appropriated from the general fund to the
6 financial institutions division of the regulation and licensing
7 department for expenditure in fiscal year 2006 to provide for
8 enforcement of the requirements as set forth in Section 3 of
9 this act. Any unexpended or unencumbered balance remaining at
10 the end of fiscal year 2006 shall revert to the general fund.

11 Section 5. REPEAL. -- Section 48-7-10.1 NMSA 1978 (being
12 Laws 2003, Chapter 200, Section 1) is repealed.

13 Section 6. EFFECTIVE DATE. -- The effective date of the
14 provisions of this act is January 1, 2006.

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