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SENATE BILL 199

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Michael S. Sanchez

AN ACT

**RELATING TO MORTGAGES; CHANGING PROVISIONS OF THE MORTGAGE
LOAN COMPANY AND LOAN BROKER ACT TO BRING MOST MORTGAGE
PRACTITIONERS UNDER THE ACT'S REGISTRATION AND LICENSING
REQUIREMENTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978.**

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 ~~[any]~~ 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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1 B. "division" means the financial institutions
2 division of the regulation and licensing department;

3 C. "director" means the director of the financial
4 institutions division of the regulation and licensing
5 department;

6 D. "dwelling" means a residential structure,
7 including a home, individual condominium unit, manufactured
8 home or modular home, that contains one to four units and is
9 permanently attached to real property;

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

13 ~~[E.]~~ F. "mortgage loan" means ~~[any]~~ a loan secured
14 by a ~~[mortgage, deed of trust or other lien on]~~ dwelling
15 permanently affixed to real ~~[or personal]~~ property; and

16 ~~[F.]~~ G. "mortgage loan company" means ~~[any]~~ a
17 person who, directly or indirectly:

18 (1) holds himself out as being able to serve
19 as an agent for any person in an attempt to obtain a mortgage
20 loan ~~[which will be secured by a lien or mortgage on real or~~
21 ~~personal property];~~

22 (2) holds himself out as being able to serve
23 as an agent for ~~[any]~~ a person who ~~[has money to lend, which~~
24 ~~loan is or will be secured by a lien or mortgage on real or~~
25 ~~personal property]~~ makes mortgage loans; or

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1 (3) holds himself out as being able to make
2 mortgage loans [~~secured by liens or mortgages on real or~~
3 ~~personal property; and~~

4 G. ~~"person" means an individual, corporation,~~
5 ~~partnership, association, joint stock company, trust where the~~
6 ~~interests of the beneficiaries are evidenced by a security,~~
7 ~~unincorporated organization, government or political~~
8 ~~subdivision of a government]. "~~

9 Section 2. Section 58-21-3 NMSA 1978 (being Laws 1983,
10 Chapter 86, Section 3) is amended to read:

11 "58-21-3. REGISTRATION CERTIFICATE REQUIRED. -- It is
12 unlawful for any person to transact business in the state of
13 New Mexico, either directly or indirectly, as a mortgage loan
14 company or loan broker without first filing an application
15 with the director and obtaining a registration certificate
16 under the Mortgage Loan Company and Loan Broker Act [~~unless~~
17 ~~such person is exempt from the provisions of the Mortgage Loan~~
18 ~~Company and Loan Broker Act under the provisions of Section 6~~
19 ~~of that act]. "~~

20 Section 3. Section 58-21-4 NMSA 1978 (being Laws 1983,
21 Chapter 86, Section 4, as amended) is amended to read:

22 "58-21-4. APPLICATION FOR REGISTRATION OR RENEWAL. -- Each
23 application for registration or renewal as a mortgage loan
24 company or loan broker shall be filed in writing with the
25 director, shall be verified and shall contain the following:

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1 A. the name of the applicant and of each of the
2 applicant's affiliates, engaged in the business of a loan
3 broker or a mortgage loan company, and the name under which
4 the applicant will conduct business in New Mexico, together
5 with the articles of incorporation or articles of partnership;

6 B. the location of the applicant's principal
7 office and of each branch office in New Mexico;

8 C. the name, residence and business address of
9 each person having an interest in the business as principal,
10 partner, officer, trustee, director or manager, specifying the
11 capacity and title of each;

12 D. a [~~certified~~] financial statement of the
13 applicant [~~and if the applicant is a corporation, the~~
14 ~~statement must be prepared by an independent certified public~~
15 ~~accountant or registered public accountant]~~ verified by a
16 principal of the applicant;

17 E. the length of time the applicant has been
18 engaged in business in other jurisdictions;

19 F. disclosure of any action or proceeding, civil
20 or criminal, judicial or administrative, completed or in
21 progress against the applicant or [~~any~~] a director, officer,
22 employee or affiliate of the applicant;

23 G. the registration fee; and

24 H. such other information and documentation as the
25 director may require. "

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1 Section 4. Section 58-21-5 NMSA 1978 (being Laws 1983,
2 Chapter 86, Section 5, as amended) is amended to read:

3 "58-21-5. REGISTRATION FEES-- DURATION OF REGISTRATION. --

4 A. Applicants shall, at the time of application,
5 pay to the division four hundred dollars (\$400) for initial
6 registration and three hundred dollars (\$300) for each renewal
7 registration. Additionally, the director shall charge and
8 collect from an applicant a fee of ten dollars (\$10.00) per
9 day for late filings of a renewal registration or three
10 hundred dollars (\$300), whichever is less.

11 B. A registration shall continue for a period of
12 twelve months from the date of registration. Each registrant
13 shall submit a renewal application at least thirty days before
14 the expiration of his existing registration.

15 C. ~~[Persons claiming exemption pursuant to~~
16 ~~Subsection H of Section 58-21-6 NMSA 1978 shall, at the time~~
17 ~~of such claim, pay to the division three hundred dollars~~
18 ~~(\$300). Additionally, the director shall charge and collect~~
19 ~~from a claimant a fee of ten dollars (\$10.00) per day for late~~
20 ~~filings of an exemption certification form or three hundred~~
21 ~~dollars (\$300), whichever is less.] A registrant shall pay a~~
22 ~~replacement license fee of fifty dollars (\$50.00).~~"

23 Section 5. Section 58-21-6 NMSA 1978 (being Laws 1983,
24 Chapter 86, Section 6, as amended) is amended to read:

25 "58-21-6. PERSONS EXEMPT FROM REGISTRATION. -- The

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1 following persons shall be exempt from all provisions of the
2 Mortgage Loan Company and Loan Broker Act:

3 A. banks, trust companies, savings and loan
4 associations, credit unions, consumer finance companies,
5 insurance companies or real estate investment trusts as
6 defined in [~~26 U.S.C. Sec. 856~~] 26 USCA 856;

7 B. an attorney licensed to practice law in New
8 Mexico who is not principally engaged in the business of
9 negotiating loans secured by real or personal property, when
10 [~~such~~] the person renders services in the course of his
11 practice as an attorney [~~at-law~~];

12 C. a New Mexico-licensed real estate broker
13 rendering service in the performance of his duties as a real
14 estate broker who obtains financing for a real estate
15 transaction involving an actual bona fide sale of real estate
16 or real estate contract handled by [~~such~~] the broker and who
17 receives only the customary real estate broker's commission in
18 connection with the transaction;

19 D. [~~any~~] a person doing [~~any~~] an act under order
20 of [~~any~~] a court;

21 E. [~~any~~] a person making or acquiring a mortgage
22 loan with his own funds for his own investment without the
23 intent to resell the mortgage loan;

24 F. the United States of America, state of New
25 Mexico or any of their branches, agencies, departments,

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1 boards, instrumentalities or institutions and all political
2 subdivisions of the state and their agencies,
3 instrumentalities and institutions; and

4 G. a company [~~which is~~] licensed as a small
5 business investment company under the federal Small Business
6 Investment Act of 1958 [~~and~~

7 ~~H. any person doing business in New Mexico who has~~
8 ~~as one of his principal purposes the brokering, making or~~
9 ~~originating of loans secured by real estate mortgages and who~~
10 ~~does not place or sell more than ten percent of such loans to~~
11 ~~persons other than institutional investors. For purposes of~~
12 ~~this subsection, an institutional investor is:~~

13 (1) ~~any person exempt from the provisions of~~
14 ~~the Mortgage Loan Company and Loan Broker Act pursuant to~~
15 ~~Subsection A of this section;~~

16 (2) ~~the federal national mortgage~~
17 ~~association, the government national mortgage association, the~~
18 ~~federal home loan mortgage corporation, the New Mexico~~
19 ~~mortgage finance authority and any other entity which is an~~
20 ~~instrumentality of or sponsored by the federal government or~~
21 ~~the state of New Mexico, and any successors to any of the~~
22 ~~foregoing, or the state itself; and~~

23 (3) ~~any other person who in the twelve months~~
24 ~~immediately preceding any such transaction has acquired real~~
25 ~~estate mortgage loans in an aggregate principal amount equal~~

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1 ~~to at least twenty-five million dollars (\$25,000,000).~~

2 ~~For the purposes of this subsection, a loan shall be~~
3 ~~considered placed or sold if all or a major part of the loan~~
4 ~~indebtedness, as evidenced by the delivery of the loan note~~
5 ~~itself or a certificate of loan participation, is sold~~
6 ~~directly to such institutional investor or is included in a~~
7 ~~pass-through certificate, collateralized mortgage obligation~~
8 ~~or similar instrument issued by such institutional investor.~~

9 ~~In order to claim the exemption provided by this~~
10 ~~subsection, a mortgage loan company or loan broker must~~
11 ~~certify to the director, on a form acceptable to the director,~~
12 ~~on or before the later of June 30, 1985, or thirty days after~~
13 ~~the person first transacts business in New Mexico as a~~
14 ~~mortgage loan company or loan broker, that such person~~
15 ~~qualifies for the exemption. The director may require the~~
16 ~~person to identify on the certification form the institutional~~
17 ~~investors to whom the person brokers or sells its real estate~~
18 ~~mortgage loans. The director may require any person to~~
19 ~~recertify for this exemption in January of each calendar year,~~
20 ~~beginning with January, 1986 or at any other time as may be~~
21 ~~prescribed by rule or regulation.~~

22 ~~Notwithstanding the foregoing, no person may rely in any~~
23 ~~calendar year on the exemption provided by this subsection if,~~
24 ~~during such calendar year, such person makes a loan secured by~~
25 ~~a real estate mortgage on the borrower's principal residence,~~

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1 ~~the annual percentage rate computed in accordance with federal~~
2 ~~truth-in-lending laws on which exceeds twice the highest~~
3 ~~reported yield during the preceding four weeks from the date~~
4 ~~the loan disclosure statement is signed, as reported by the~~
5 ~~federal reserve system for the United States treasury~~
6 ~~securities calculated at thirty-year constant maturity]. "~~

7 Section 6. Section 58-21-8 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 8, as amended) is amended to read:

9 "58-21-8. DENIAL, SUSPENSION OR REVOCATION OF
10 REGISTRATION.--The director may deny, suspend or revoke any
11 registration when the applicant or registrant, or [any] a
12 director, officer, employee or affiliate of the applicant or
13 registrant:

14 A. lacks a good business reputation;

15 B. has violated [any] a provision of the Mortgage
16 Loan Company and Loan Broker Act;

17 C. charges, collects or receives fees for
18 procuring, negotiating or securing [any] a loan in excess of
19 the amounts allowed by the Mortgage Loan Company and Loan
20 Broker Act or by [~~regulations issued by the director~~] rules
21 promulgated pursuant to that act;

22 D. has committed fraud in connection with [any] a
23 transaction subject to the Mortgage Loan Company and Loan
24 Broker Act;

25 E. has made [any ~~misrepresentations~~] a

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1 misrepresentation or false [~~statements~~] statement to or
2 concealed [~~any~~] an essential or material fact from [~~any~~] a
3 person in the course of the loan broker or mortgage loan
4 company business;

5 F. has knowingly made or caused to be made [~~any~~] a
6 false representation of material fact or has suppressed or
7 withheld from the director [~~any~~] information [~~which~~] that the
8 applicant or registrant possesses and which if submitted by
9 him would have rendered the applicant or registrant ineligible
10 to be registered under the Mortgage Loan Company and Loan
11 Broker Act;

12 G. has violated any provisions of any New Mexico
13 statute relating to escrow agents or escrow companies;

14 H. has refused to permit an examination by the
15 director of his books and records or has refused or failed,
16 within a reasonable time, to furnish [~~any~~] information or make
17 [~~any~~] a report that may be required by the director under the
18 provisions of the Mortgage Loan Company and Loan Broker Act;
19 [~~or~~]

20 I. has been convicted of a felony or any
21 misdemeanor involving moral turpitude; subject, however, to
22 the provisions of the Criminal Offender Employment Act; or

23 J. appears to be conducting business in a manner
24 that is injurious to persons."

25 Section 7. Section 58-21-9 NMSA 1978 (being Laws 1983,

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1 Chapter 86, Section 9, as amended) is amended to read:

2 "58-21-9. POWERS AND DUTIES OF DIRECTOR. --

3 A. The director shall exercise general supervision
4 and control over mortgage loan companies and loan brokers
5 doing business in New Mexico. In addition to the other duties
6 imposed on him by law, the director shall:

7 (1) make reasonable rules [~~and regulations as~~
8 ~~may be~~] necessary for the implementation of the Mortgage Loan
9 Company and Loan Broker Act; provided that [~~such~~] promulgated
10 rules [~~and regulations~~] shall be subject to [~~the~~] judicial
11 review in the manner set forth in Section 12-8-8 NMSA 1978;

12 (2) conduct [~~such~~] investigations [~~as may be~~]
13 necessary to determine whether [~~any~~] a person has engaged in
14 or is about to engage in [~~any~~] an act or practice constituting
15 a violation of [~~any~~] a provision of the Mortgage Loan Company
16 and Loan Broker Act; and

17 (3) conduct examinations, investigations and
18 hearings in addition to those specifically provided for by law
19 [~~as may be~~] necessary and proper to the efficient
20 administration of the Mortgage Loan Company and Loan Broker
21 Act.

22 B. The director ~~may~~ conduct an investigation upon
23 complaint, when it appears that a mortgage loan company or
24 loan broker is conducting business in a manner injurious to
25 [~~consumers or brokers~~] persons, or when it appears that [~~any~~]

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1 a person has improperly claimed an exemption pursuant to
2 [~~Subsection E or H of~~] Section 58-21-6 NMSA 1978. "

3 Section 8. Section 58-21-11 NMSA 1978 (being Laws 1983,
4 Chapter 86, Section 11) is amended to read:

5 "58-21-11. KEEPING OF RECORDS [~~AND FILING OF REPORTS~~]. --
6 Every mortgage loan company and loan broker shall make and
7 keep [~~such~~] those accounts, correspondence, memoranda, papers,
8 books, data and other records as the director by rule
9 prescribes. All records so required shall be preserved for
10 six years. [~~Every mortgage loan company and loan broker shall~~
11 ~~file financial reports as the director by rule prescribes. If~~
12 ~~the information contained in any document filed with the~~
13 ~~director is or becomes inaccurate or incomplete in any~~
14 ~~material respect, the registrant shall file a correcting~~
15 ~~amendment within thirty days.] "~~

16 Section 9. Section 58-21-12 NMSA 1978 (being Laws 1983,
17 Chapter 86, Section 12, as amended) is amended to read:

18 "58-21-12. EXAMINATION OF RECORDS. -- All the records
19 required to be maintained by the Mortgage Loan Company and
20 Loan Broker Act are subject to [~~annual~~] examinations or
21 investigations by representatives of the director within or
22 without New Mexico [~~together with such special or other~~
23 ~~examinations~~] as the director deems necessary or appropriate
24 in the public interest or for the protection of investors.
25 The mortgage loan company or loan broker so examined shall pay

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1 a fee for each such examination at the rate of [~~one hundred~~
2 ~~fifty dollars (\$150)~~] three hundred dollars (\$300) per day, or
3 fraction thereof, for each authorized representative engaged
4 in the examination. If the examination is conducted outside
5 the state, the actual cost of travel for the examiners shall
6 also be reimbursed to the state by the mortgage loan company
7 or loan broker so examined. "

8 Section 10. Section 58-21-15 NMSA 1978 (being Laws 1983,
9 Chapter 86, Section 15) is amended to read:

10 "58-21-15. INVESTIGATIONS BY DIRECTOR [~~INJUNCTIONS~~]. --

11 [~~A. When the director has reason to believe that a~~
12 ~~mortgage loan company or loan broker is conducting its~~
13 ~~business in violation of the Mortgage Loan Company and Loan~~
14 ~~Broker Act or that any person is engaging in the mortgage loan~~
15 ~~company or loan broker business without being registered under~~
16 ~~the provisions of the Mortgage Loan Company and Loan Broker~~
17 ~~Act, unless exempt therefrom under the provisions of Section 6~~
18 ~~of that act, he may make such an investigation as he deems~~
19 ~~necessary.~~

20 B. ~~When the director finds upon sufficient~~
21 ~~evidence that any mortgage loan company or loan broker has~~
22 ~~engaged in or is about to engage in any act or practice in~~
23 ~~violation of the Mortgage Loan Company and Loan Broker Act,~~
24 ~~the director may:~~

25 (1) ~~refer the evidence concerning alleged~~

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1 ~~violations of the Mortgage Loan Company and Loan Broker Act to~~
2 ~~the appropriate district attorney, or to the attorney general,~~
3 ~~who may, with or without such reference, institute the~~
4 ~~appropriate criminal proceedings under the Mortgage Loan~~
5 ~~Company and Loan Broker Act; and~~

6 (2) ~~summarily order the mortgage loan company~~
7 ~~or loan broker to cease and desist from such act or practice~~
8 ~~or apply to any district court having venue to enjoin the act~~
9 ~~or practice and to enforce compliance with the Mortgage Loan~~
10 ~~Company and Loan Broker Act or both. If the director applies~~
11 ~~to the court for relief, upon proper showing, a permanent or~~
12 ~~temporary injunction, restraining order or writ of mandamus~~
13 ~~shall be granted, a receiver or conservator may be appointed~~
14 ~~for the defendant or defendant's assets and the court may~~
15 ~~provide such other equitable relief as it may deem~~
16 ~~appropriate. The court shall not require the director to post~~
17 ~~a bond.]~~

18 A. The director may make any public or private
19 investigation, within or outside of this state, as he finds
20 necessary to determine whether a person has violated or is
21 about to violate the Mortgage Loan Company and Loan Broker Act
22 or any rule or order of the director under that act or to aid
23 in enforcement of that act or in the rules under that act.

24 B. The director may publish information concerning
25 a violation of the Mortgage Loan Company and Loan Broker Act

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1 or a rule or order of the director under that act or
2 concerning mortgage loan activities of persons that may
3 operate as a fraud or deceit."

4 Section 11. Section 58-21-18 NMSA 1978 (being Laws 1983,
5 Chapter 86, Section 18, as amended) is amended to read:

6 "58-21-18. ~~[PROHIBITED]~~ PERMISSIBLE CHARGES. -- In
7 connection with any loan originated, brokered, negotiated or
8 made by a registrant ~~[under]~~ pursuant to the Mortgage Loan
9 Company and Loan Broker Act, [no charges other than interest
10 shall be made, except the following:

11 A. ~~the actual and reasonable expenditures for an~~
12 ~~abstract of title, title examination, title insurance~~
13 ~~premiums, property survey, appraisal fees, notary fees,~~
14 ~~preparation of deeds, mortgages or other documents, credit~~
15 ~~reports and filing and recording fees;~~

16 B. ~~broker's fees not in excess of six percent of~~
17 ~~the principal amount of the loan;~~

18 C. ~~a one-time charge of an amount not to exceed~~
19 ~~fifteen dollars (\$15.00) when the loan is made to a natural~~
20 ~~person, primarily for personal, family or household purposes,~~
21 ~~to help defray the actual cost of preparing truth-in-lending~~
22 ~~disclosure statements, equal credit opportunity disclosure~~
23 ~~statements and other disclosures required by law; and~~

24 D. ~~such other fees as the director by regulation~~
25 ~~may permit] a broker may not collect, charge or receive broker~~

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1 fees in excess of six percent of the principal amount of the
2 loan. A registrant may charge reasonable settlement,
3 origination, transaction and other fees or charges not
4 otherwise prohibited or limited by state or federal laws. "

5 Section 12. Section 58-21-19 NMSA 1978 (being Laws 1983,
6 Chapter 86, Section 19, as amended) is amended to read:

7 "58-21-19. [~~PROHIBITED WITHHOLDING AND ESCROWING OF LOAN~~
8 ~~PROCEEDS--DISCLOSURE--PENALTY]~~ COMPLIANCE WITH FEDERAL LAW. - -

9 In connection with any loan originated, brokered, negotiated
10 or made by a registrant [~~under, and which loan is subject~~]
11 pursuant to the Mortgage Loan Company and Loan Broker Act

12 [~~A. the loan shall not require or provide for the~~
13 ~~withholding or escrowing of any portion of the loan proceeds~~
14 ~~to cover any future payments, whether principal or interest or~~
15 ~~both, to the mortgagee or obligee of such loan;~~

16 B. ~~the loan agreement shall not require or provide~~
17 ~~for the withholding or escrowing of any portion of the loan~~
18 ~~proceeds to cover any payments to be made in the future on any~~
19 ~~prior encumbrance or lien, except for a reasonable amount to~~
20 ~~be applied toward the next annual payment of property taxes;~~

21 C. ~~prepaid interest in the nature of points,~~
22 ~~regardless of how characterized, shall not be charged; and~~

23 D. ~~at least three business days prior to closing a~~
24 ~~loan, the registrant shall provide to the borrower disclosure~~
25 ~~in accordance with the provisions of Section 56-8-11.2 NMSA~~

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1 ~~1978. Any registrant who fails to comply with the disclosure~~
2 ~~requirements or who provides information which is~~
3 ~~substantially incorrect as to the rate or charge shall forfeit~~
4 ~~all interest, charges or other advantage for the loan to the~~
5 ~~borrower], registrants shall comply with applicable federal~~
6 consumer lending laws. "

7 Section 13. Section 58-21-22 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 22) is amended to read:

9 "58-21-22. PENALTIES. -- ~~[Any]~~ A person who violates
10 ~~[Sections 3, 18, 19 or 21 of the Mortgage Loan Company and~~
11 ~~Loan Broker Act]~~ Section 58-21-3, 58-21-18, 58-21-19 or
12 58-21-21 NMSA 1978 or who violates Section ~~[20 of that act]~~
13 58-21-20 NMSA 1978, knowing the statement to be false or
14 misleading in any material respect, ~~[shall be]~~ is guilty of a
15 fourth degree felony and upon conviction shall be sentenced as
16 provided for in ~~[the Criminal Sentencing Act]~~ Section 31-18-15
17 NMSA 1978. "

18 Section 14. Section 58-21-23 NMSA 1978 (being Laws 1983,
19 Chapter 86, Section 23) is amended to read:

20 "58-21-23. FILING AND DESTRUCTION OF DOCUMENTS. -- A
21 document is filed when it is received by the director. The
22 director may permit the destruction of any document filed
23 under the Mortgage Loan Company and Loan Broker Act with the
24 division or the director after

25 ~~[A.]~~ six years from the date of filing documents

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1 [or

2 B. ~~the reproduction of documents by photograph or~~
3 ~~microphotograph of a permanent nature]. "~~

4 Section 15. A new Section 58-21-28 NMSA 1978 is enacted
5 to read:

6 "58-21-28. [NEW MATERIAL] ENFORCEMENT. --

7 A. If the director reasonably believes, whether or
8 not based upon an investigation conducted under Section
9 58-21-15 NMSA 1978, that a person has engaged, is engaging or
10 is about to engage in an act or practice constituting a
11 violation of any provision of the Mortgage Loan Company and
12 Loan Broker Act or any rule promulgated pursuant to that act,
13 the director may, subject to the right of that person to
14 obtain a subsequent hearing pursuant to Subsection B of
15 Section 58-21-14 NMSA 1978, issue a cease and desist order
16 without a prior hearing against the person engaged in the
17 prohibited activities directing him to desist and refrain from
18 further illegal activity.

19 B. When it appears to the director, whether or not
20 based upon an investigation conducted under Section 58-21-15
21 NMSA 1978, that a person has violated the Mortgage Loan
22 Company and Loan Broker Act or a rule or order of the director
23 under that act, the director, in addition to any specific
24 power granted under that act, may, after notice and hearing in
25 an administrative proceeding unless the right to notice and

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1 hearing is waived by the person against whom the sanction is
2 imposed:

3 (1) issue a cease and desist order against
4 the person;

5 (2) censure the person if that person is a
6 registered mortgage loan company or loan broker;

7 (3) bar or suspend that person from
8 registration in this state as a mortgage loan company or loan
9 broker;

10 (4) issue an order against an applicant,
11 registered person or other person who violates that act,
12 imposing a civil penalty up to a maximum of five thousand
13 dollars (\$5,000) for each violation; or

14 (5) initiate one or more of the actions
15 specified in Section 58-21-29 NMSA 1978, as applicable."

16 Section 16. A new Section 58-21-29 NMSA 1978 is enacted
17 to read:

18 "58-21-29. [NEW MATERIAL] POWER OF COURT TO GRANT
19 RELIEF. --

20 A. Upon a showing by the director that a person
21 has or is about to violate the Mortgage Loan Company and Loan
22 Broker Act or any rule or order of the director under that
23 act, the district court of the first judicial district for
24 Santa Fe county or other appropriate district court in the
25 state may grant or impose one or more of the following

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1 appropriate legal or equitable remedies:

2 (1) a temporary restraining order, permanent
3 or temporary prohibitory or mandatory injunction or a writ of
4 prohibition or mandamus;

5 (2) a civil penalty up to a maximum of five
6 thousand dollars (\$5,000) for each violation;

7 (3) disgorgement;

8 (4) declaratory judgment;

9 (5) restitution to consumers;

10 (6) the appointment of a receiver or
11 conservator for the defendant or the defendant's assets;

12 (7) recovery by the director of all costs and
13 expenses for conducting an investigation or the bringing of
14 any enforcement action under that act; or

15 (8) other relief as the court deems just.

16 B. In determining the appropriate relief to grant,
17 the court shall consider enforcement actions taken and
18 sanctions imposed by the director under Section 58-21-28 NMSA
19 1978 in connection with the transactions constituting
20 violations of the Mortgage Loan Company and Loan Broker Act.

21 C. The court shall not require the director to
22 post bond in an action under this section. "

23 Section 17. REPEAL. -- Sections 58-21-24 and 58-21-27 NMSA
24 1978 (being Laws 1983, Chapter 86, Section 24 and Laws 1987,
25 Chapter 343, Section 1) are repealed.

