

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

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

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

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

F. "mortgage loan" means a loan secured by a dwelling permanently affixed to real property; and

G. "mortgage loan company" means a person who, directly or indirectly:

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

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

(3) holds himself out as being able to make mortgage loans. "

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

"58-21-3. REGISTRATION CERTIFICATE REQUIRED. --It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company or loan broker without first filing an application with the director and obtaining a registration certificate under the Mortgage Loan Company and Loan Broker Act. "

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

"58-21-4. APPLICATION FOR REGISTRATION OR RENEWAL. --

Each application for registration or renewal as a mortgage loan company or loan broker shall be filed in writing with the director, shall be verified and shall contain the following:

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

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

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

D. a financial statement of the applicant verified by a principal of the applicant;

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

F. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress against the applicant or a director, officer, employee or affiliate of the applicant;

G. the registration fee; and

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

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

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

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

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

C. A registrant shall pay a replacement license fee of fifty dollars (\$50.00). "

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

"58-21-6. PERSONS EXEMPT FROM REGISTRATION. -- The following persons shall be exempt from all provisions of the Mortgage Loan Company and Loan Broker Act:

A. banks, trust companies, savings and loan

associations, credit unions, consumer finance companies, insurance companies or real estate investment trusts as defined in 26 USCA 856;

B. an attorney licensed to practice law in New Mexico who is not principally engaged in the business of negotiating loans secured by real or personal property, when the person renders services in the course of his practice as an attorney;

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

D. a person doing an act under order of a court;

E. a person making or acquiring a mortgage loan with his own funds for his own investment without the intent to resell the mortgage loan;

F. the United States of America, state of New Mexico or any of their branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions; and

G. a company licensed as a small business

investment company under the federal Small Business Investment Act of 1958."

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

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

- A. lacks a good business reputation;
- B. has violated a provision of the Mortgage Loan Company and Loan Broker Act;
- C. charges, collects or receives fees for procuring, negotiating or securing a loan in excess of the amounts allowed by the Mortgage Loan Company and Loan Broker Act or by rules promulgated pursuant to that act;
- D. has committed fraud in connection with a transaction subject to the Mortgage Loan Company and Loan Broker Act;
- E. has made a misrepresentation or false statement to or concealed an essential or material fact from a person in the course of the loan broker or mortgage loan company business;
- F. has knowingly made or caused to be made a false representation of material fact or has suppressed or

withheld from the director information that the applicant or registrant possesses and which if submitted by him would have rendered the applicant or registrant ineligible to be registered under the Mortgage Loan Company and Loan Broker Act;

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

H. has refused to permit an examination by the director of his books and records or has refused or failed, within a reasonable time, to furnish information or make a report that may be required by the director under the provisions of the Mortgage Loan Company and Loan Broker Act;

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

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

Section 7. Section 58-21-9 NMSA 1978 (being Laws 1983, Chapter 86, Section 9, as amended) is amended to read:

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

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

- (1) make reasonable rules necessary for the

implementation of the Mortgage Loan Company and Loan Broker Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct investigations necessary to determine whether a person has engaged in or is about to engage in an act or practice constituting a violation of a provision of the Mortgage Loan Company and Loan Broker Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law necessary and proper to the efficient administration of the Mortgage Loan Company and Loan Broker Act.

B. The director may conduct an investigation upon complaint, when it appears that a mortgage loan company or loan broker is conducting business in a manner injurious to persons, or when it appears that a person has improperly claimed an exemption pursuant to Section 58-21-6 NMSA 1978."

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

"58-21-11. KEEPING OF RECORDS. -- Every mortgage loan company and loan broker shall make and keep those accounts, correspondence, memoranda, papers, books, data and other records as the director by rule prescribes. All records so required shall be preserved for six years."

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

"58-21-12. EXAMINATION OF RECORDS. --All the records required to be maintained by the Mortgage Loan Company and Loan Broker Act are subject to examinations or investigations by representatives of the director within or without New Mexico as the director deems necessary or appropriate in the public interest or for the protection of investors. The mortgage loan company or loan broker so examined shall pay a fee for each such examination at the rate of three hundred dollars (\$300) per day, or fraction thereof, for each authorized representative engaged in the examination. If the examination is conducted outside the state, the actual cost of travel for the examiners shall also be reimbursed to the state by the mortgage loan company or loan broker so examined."

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

"58-21-15. INVESTIGATIONS BY DIRECTOR. --

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

act.

B. The director may publish information concerning a violation of the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act or concerning mortgage loan activities of persons that may operate as a fraud or deceit. "

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

"58-21-18. PERMISSIBLE CHARGES. -- In connection with any loan originated, brokered, negotiated or made by a registrant pursuant to the Mortgage Loan Company and Loan Broker Act, a broker may not collect, charge or receive broker fees in excess of six percent of the principal amount of the loan. A registrant may charge reasonable settlement, origination, transaction and other fees or charges not otherwise prohibited or limited by state or federal laws. "

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

"58-21-19. COMPLIANCE WITH FEDERAL LAW. -- In connection with any loan originated, brokered, negotiated or made by a registrant pursuant to the Mortgage Loan Company and Loan Broker Act, registrants shall comply with applicable federal consumer lending laws. "

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

"58-21-22. PENALTIES. -- A person who violates Section 58-21-3, 58-21-18, 58-21-19 or 58-21-21 NMSA 1978 or who violates Section 58-21-20 NMSA 1978, knowing the statement to be false or misleading in any material respect, is guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in Section 31-18-15 NMSA 1978. Civil and criminal penalties are in addition to any remedies available at common law."

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

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

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

"58-21-28. ENFORCEMENT. --

A. If the director reasonably believes, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has engaged, is engaging or is about to engage in an act or practice constituting a violation of any provision of the Mortgage Loan Company and Loan Broker Act or any rule promulgated pursuant to that act,

the director may, subject to the right of that person to obtain a subsequent hearing pursuant to Subsection B of Section 58-21-14 NMSA 1978, issue a cease and desist order without a prior hearing against the person engaged in the prohibited activities directing him to desist and refrain from further illegal activity.

B. When it appears to the director, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has violated the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act, the director, in addition to any specific power granted under that act, may, after notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:

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

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

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

(4) issue an order against an applicant, registered person or other person who violates that act, imposing a civil penalty up to a maximum of five thousand

dollars (\$5,000) for each violation; or

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

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

"58-21-29. POWER OF COURT TO GRANT RELIEF. --

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

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

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

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

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

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing

of any enforcement action under that act; or

(8) other relief as the court deems just.

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

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

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

Section 18. EFFECTIVE DATE. --

A. The effective date of the provisions of Sections 2 and 5 of this act is January 31, 2002.

B. The effective date of the provisions of Sections 1, 3, 4 and 6 through 18 of this act is July 1, 2001.