

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 895

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

AN ACT

RELATING TO LICENSING; LICENSING MORTGAGE LOAN COMPANIES,
MORTGAGE BROKERS AND LOAN OFFICERS; CREATING AN ADVISORY
COMMITTEE; DEFINING ITS POWERS; CREATING A FUND; PROVIDING FOR
ENFORCEMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. Section 56-8-7 NMSA 1978 (being Laws 1912,
Chapter 31, Section 1, as amended) is amended to read:

"56-8-7. PROCURING LOANS--RATE OF COMMISSION--
EXCEPTIONS.--For negotiating or securing any loan, no person,
association of persons or corporation shall charge, collect or
receive in excess of the following amounts:

A. upon any loan not exceeding five hundred
dollars (\$500), four percent;

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1 B. upon any loan exceeding five hundred dollars
2 (\$500) and not exceeding two thousand dollars (\$2,000), four
3 percent upon the first five hundred dollars (\$500) and three
4 percent upon the remainder; and

5 C. upon any loan exceeding two thousand dollars
6 (\$2,000), four percent upon the first one thousand dollars
7 (\$1,000) and two percent upon the remainder; provided that
8 this section shall not apply to ~~[any]~~ a loan in excess of
9 fifty thousand dollars (\$50,000) when such loan is made for
10 business, commercial or agricultural purposes ~~[not]~~ or to
11 ~~[any]~~ a loan negotiated or secured by a ~~[registrant]~~ licensee
12 under the Mortgage ~~[Loan Company and Loan]~~ Broker Act. In
13 such instances, broker's fees shall be negotiable but shall
14 not exceed six percent of the principal amount of the loan."

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

17 "58-21-1. SHORT TITLE. -- Chapter 58, Article 21 NMSA 1978
18 may be cited as the "Mortgage ~~[Loan Company and Loan]~~ Broker
19 Act". "

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

22 "58-21-2. DEFINITIONS. -- As used in the Mortgage ~~[Loan~~
23 ~~Company and Loan]~~ Broker Act:

24 A. "affiliate" means ~~[any]~~ a person who, directly
25 or indirectly, through one or more intermediaries, controls or

1 is controlled by or is under common control with another
2 person;

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

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

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

12 E. "fund" means the mortgage broker recovery fund;

13 F. "loan officer" means a person sponsored by a
14 licensed mortgage broker to perform the acts of a mortgage
15 broker;

16 G. "mortgage applicant" means a person who is
17 solicited to use or who uses a mortgage broker to obtain a
18 mortgage loan;

19 [~~D.—"loan]~~ H. "mortgage broker" means [any] a
20 person who acts as a finder or agent of a lender or borrower
21 of money for the purpose of procuring a mortgage loan, or
22 both;

23 [~~E.]~~ I. "mortgage loan" means [any] a loan secured
24 by a [mortgage, deed of trust or other lien on real or
25 personal] dwelling permanently affixed to real property;

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1 ~~[F.]~~ J. "mortgage loan company" means ~~[any]~~ a
2 person who, directly or indirectly:

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

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

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

14 ~~G.]~~ K. "person" means an individual, corporation,
15 partnership, association, joint-stock company, trust where the
16 interests of the beneficiaries are evidenced by a security,
17 unincorporated organization, government or political
18 subdivision of a government; and

19 L. "real estate professional" means a licensed
20 broker, qualifying broker, brokerage or real estate
21 salesperson as defined in Chapter 61, Article 29 NMSA 1978. "

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

24 "58-21-3. ~~[REGISTRATION CERTIFICATE]~~ LICENSE REQUIRED. --
25 It is unlawful for ~~[any]~~ a person to transact business in the

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1 state of New Mexico, either directly or indirectly, as a
 2 [~~mortgage loan company, or loan~~] mortgage broker or loan
 3 officer without first filing an application with the director
 4 and obtaining a [~~registration certificate under~~] license
 5 pursuant to the Mortgage [~~Loan Company and Loan~~] Broker Act,
 6 unless [~~such~~] the person is exempt from the provisions of the
 7 Mortgage [~~Loan Company and Loan~~] Broker Act under the
 8 provisions of Section [~~6 of that act~~] 58-21-6 NMSA 1978. "

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

11 "58-21-4. APPLICATION FOR [~~REGISTRATION~~] LICENSE OR
 12 RENEWAL. --

13 [~~Each~~] A. An application for [~~registration~~] a
 14 license or renewal as a [~~mortgage loan company or loan~~]
 15 mortgage broker shall be filed in writing with the director,
 16 shall be verified and shall contain the following:

17 [~~A.-~~] (1) the name of the applicant and of
 18 each of the applicant's affiliates, engaged in the business of
 19 a [~~loan~~] mortgage broker [~~or a mortgage loan company~~] and the
 20 name under which the applicant will conduct business in New
 21 Mexico, together with the articles of incorporation or
 22 articles of partnership;

23 [~~B.-~~] (2) the location of the applicant's
 24 principal office and of each branch office in New Mexico;

25 [~~C.-~~] (3) the name, residence and business

1 address of each person having an interest in the business as
2 principal, partner, officer, trustee, director or manager,
3 specifying the capacity and title of each;

4 ~~[D. a certified financial statement of the~~
5 ~~applicant, and if the applicant is a corporation, the~~
6 ~~statement must be prepared by an independent certified public~~
7 ~~accountant or registered public accountant;]~~

8 (4) a financial statement of the applicant
9 verified by a principal of the applicant;

10 ~~[E.]~~ (5) the length of time the applicant has
11 been engaged in business in other jurisdictions;

12 ~~[F.]~~ (6) disclosure of any action or
13 proceeding, civil or criminal, judicial or administrative,
14 completed or in progress against the applicant or any
15 director, officer, employee or affiliate of the applicant;

16 ~~[G.]~~ (7) the ~~[registration]~~ licensure fee;
17 ~~[and~~

18 ~~H.]~~ (8) such other information ~~[and]~~ or
19 documentation as the director may require; and

20 (9) if the application is for a renewal,
21 proof that the mortgage broker has completed at least fifteen
22 hours of continuing education courses approved by the
23 director, which courses shall include loan origination and
24 servicing, finance trends and theory, relationships with
25 financial markets and any other topic required by the

1 director.

2 B. An application for a license or renewal as a
3 loan officer shall be filed in writing with the director,
4 shall be verified and shall contain the following:

5 (1) the name of the applicant and the name of
6 the mortgage broker that is the sponsor of the applicant;

7 (2) the location of the applicant's principal
8 office and of each branch office;

9 (3) the length of time the applicant has been
10 engaged in business in New Mexico or other jurisdictions;

11 (4) disclosure of any action or proceeding,
12 civil or criminal, judicial or administrative, completed or in
13 progress, against the applicant or a director, officer,
14 employee or affiliate of the applicant;

15 (5) the licensure fee;

16 (6) such other information or documentation
17 as the director may require; and

18 (7) if the application is for a renewal,
19 proof that the loan officer has completed at least fifteen
20 hours of continuing education courses approved by the
21 director, which courses shall include loan origination and
22 servicing, finance trends and theory, relationships with
23 financial markets and any other topic required by the
24 director. "

25 Section 6. Section 58-21-5 NMSA 1978 (being Laws 1983,

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Chapter 86, Section 5, as amended) is amended to read:

"58-21-5. ~~[REGISTRATION]~~ LICENSURE FEES-- DURATION OF
[REGISTRATION] LICENSE. --

A. Mortgage loan company and mortgage broker
license applicants shall, at the time of application, pay to
the division four hundred dollars (\$400) for initial
~~[registration and three hundred dollars (\$300)]~~ licensure and
one hundred fifty dollars (\$150) for each renewal
~~[registration~~ Additionally] license. The director shall
charge and collect from an applicant a fee of ten dollars
(\$10.00) per day or three hundred dollars (\$300), whichever is
less, for the late [filings] filing of a renewal ~~[registration~~
~~or three hundred dollars (\$300), whichever is less]~~ license.

B. A ~~[registration]~~ mortgage loan company or
mortgage broker license shall continue for a period of twelve
months from the date of ~~[registration~~ Each registrant]
licensure. A licensee shall submit a renewal application at
least thirty days before the expiration of his existing
~~[registration]~~ license.

C. ~~[Persons claiming exemption pursuant to~~
~~Subsection H of Section 58-21-6 NMSA 1978 shall, at the time~~
~~of such claim, pay to the division three hundred dollars~~
~~(\$300). Additionally, the director shall charge and collect~~
~~from a claimant a fee of ten dollars (\$10.00) per day for late~~
~~filings of an exemption certification form or three hundred~~

1 ~~dollars (\$300), whichever is less.]~~ If a mortgage loan company
 2 or mortgage broker maintains more than one place of business
 3 in this state, application shall be made and a fee of fifty
 4 dollars (\$50.00) for an additional license to be known as a
 5 branch office license shall be paid to the division for each
 6 additional office maintained.

7 D. A loan officer license shall continue for a
 8 period of twelve months from the date of licensure. A
 9 licensee shall submit a renewal application at least thirty
 10 days before the expiration of his existing license.

11 E. Loan officer license applicants shall, at the
 12 time of application, pay to the division one hundred seventy-
 13 five dollars (\$175) for initial licensure and one hundred
 14 dollars (\$100) for each renewal license. The director shall
 15 charge and collect from an applicant a fee of five dollars
 16 (\$5.00) per day or one hundred fifty dollars (\$150), whichever
 17 is less, for the late filing of a renewal license."

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

20 "58-21-6. PERSONS EXEMPT FROM [REGISTRATION]
 21 LICENSURE. -- The following persons shall be exempt from all
 22 provisions of the Mortgage [~~Loan Company and Loan~~] Broker Act:

23 A. banks, trust companies, savings and loan
 24 associations, credit unions, consumer finance companies,
 25 insurance companies or real estate investment trusts as

1 defined in 26 U. S. C. Sec. 856;

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

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

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

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

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

25 G. a company [~~which~~] that is licensed as a small

1 business investment company under the federal Small Business
 2 Investment Act of 1958 [~~and~~

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

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

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

19 (3) ~~any other person who in the twelve months~~
 20 ~~immediately preceding any such transaction has acquired real~~
 21 ~~estate mortgage loans in an aggregate principal amount equal~~
 22 ~~to at least twenty-five million dollars (\$25,000,000).~~

23 ~~For the purposes of this subsection, a loan shall be~~
 24 ~~considered placed or sold if all or a major part of the loan~~
 25 ~~indebtedness, as evidenced by the delivery of the loan note~~

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1 ~~itself or a certificate of loan participation, is sold~~
2 ~~directly to such institutional investor or is included in a~~
3 ~~pass-through certificate, collateralized mortgage obligation~~
4 ~~or similar instrument issued by such institutional investor.~~

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

18 ~~Notwithstanding the foregoing, no person may rely in any~~
19 ~~calendar year on the exemption provided by this subsection if,~~
20 ~~during such calendar year, such person makes a loan secured by~~
21 ~~a real estate mortgage on the borrower's principal residence,~~
22 ~~the annual percentage rate computed in accordance with federal~~
23 ~~truth-in-lending laws on which exceeds twice the highest~~
24 ~~reported yield during the preceding four weeks from the date~~
25 ~~the loan disclosure statement is signed, as reported by the~~

1 ~~federal reserve system for the United States treasury~~
2 ~~securities calculated at thirty year constant maturity]. "~~

3 Section 8. A new section of the Mortgage Broker Act is
4 enacted to read:

5 "[NEW MATERIAL] QUALIFICATIONS FOR MORTGAGE BROKER'S
6 LICENSE. --

7 A. A mortgage broker's license shall be granted
8 only to a person deemed by the director to be of good repute
9 and competent to transact the business of a mortgage loan
10 company or mortgage broker in a manner that safeguards the
11 interests of the public. The director may require information
12 as he deems necessary from an applicant to determine the
13 applicant's honesty, trustworthiness and competency.

14 B. An applicant for a mortgage broker's license
15 shall be a legal resident of the United States, have reached
16 the age of majority and provide the director evidence that the
17 applicant:

18 (1) has successfully completed at least one
19 hundred twenty hours of education courses approved by the
20 director, which courses shall include instruction on all
21 applicable state and federal laws and regulations relating to
22 mortgage loans by a licensed mortgage broker;

23 (2) has received a bachelor's degree in an
24 area relating to finance, banking or business administration
25 from an accredited college or university and has twelve months

1 of experience in the mortgage or lending field as evidenced by
2 documentary proof of full-time employment as a mortgage broker
3 or loan officer working with a mortgage broker or a person
4 exempt under Section 58-21-6 NMSA 1978;

5 (3) has performed actively as a mortgage
6 broker for at least twenty-four months out of the preceding
7 thirty-six months immediately prior to filing the application
8 as evidenced by documentary proof of full-time employment as a
9 loan officer working with a mortgage broker or a person exempt
10 under Section 58-21-6 NMSA 1978; or

11 (4) is a registered loan broker in good
12 standing on June 30, 2001.

13 C. Corporations, partnerships or associations
14 shall be entitled to hold a mortgage broker's license issued
15 in the name of the corporation, partnership or association;
16 provided that at least one member of the partnership or
17 association or one officer or employee of a corporation who
18 actively engages in the mortgage lending business first
19 secures a mortgage broker's license. The license shall be
20 issued in the name of the corporation, partnership or
21 association, naming the partner, associate, officer or
22 employee as qualifying broker for the corporation, partnership
23 or association.

24 D. The licensee shall maintain a physical office
25 in this state and designate that office in the application."

1 Section 9. A new section of the Mortgage Broker Act is
2 enacted to read:

3 "[NEW MATERIAL] QUALIFICATIONS FOR LOAN OFFICER' S
4 LICENSE. --

5 A. A license shall be granted only to a person
6 deemed by the director to be of good repute and competent to
7 transact the business of a loan officer in a manner that
8 safeguards the interests of the public. The director may
9 require information as he deems necessary from an applicant to
10 determine the applicant's honesty, trustworthiness and
11 competency.

12 B. An applicant for a loan officer's license shall
13 be a legal resident of the United States and have reached the
14 age of majority. An applicant shall provide the director
15 evidence that the applicant:

16 (1) has received a bachelor's degree in an
17 area relating to finance, banking or business administration
18 from an accredited college or university;

19 (2) has successfully completed sixty hours of
20 education courses approved by the director. The courses shall
21 include instruction on all applicable state and federal laws
22 and regulations relating to mortgage loans by a licensed
23 mortgage broker;

24 (3) has eighteen months' experience as a loan
25 officer as evidenced by documentary proof of full-time

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1 employment as a loan officer working with a mortgage broker or
2 person exempt under Section 58-21-6 NMSA 1978; or

3 (4) is employed as a loan officer on June 30,
4 2001. "

5 Section 10. Section 58-21-7 NMSA 1978 (being Laws 1983,
6 Chapter 86, Section 7) is amended to read:

7 "58-21-7. SURETY BOND. --

8 A. [~~Each~~] A mortgage loan company or [~~loan~~]
9 mortgage broker shall post and maintain with the director a
10 corporate surety bond in the amount of twenty-five thousand
11 dollars (\$25,000). [~~Every~~] The bond shall provide for suit
12 thereon by [~~any~~] a person who has a cause of action under the
13 Mortgage [~~Loan Company and Loan~~] Broker Act. In no event
14 shall the total liability of the surety to all persons,
15 cumulative or otherwise, exceed the amount specified in the
16 bond. [~~Every~~] The bond shall provide that [~~no~~] a suit [~~shall~~]
17 may not be maintained to enforce [~~any~~] liability on the bond
18 unless brought within three years after the act upon which
19 [~~it~~] the suit is based.

20 B. The bond shall be in substantially the form as
21 the director prescribes. "

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

24 "58-21-8. DENIAL, SUSPENSION OR REVOCATION OF
25 [~~REGISTRATION~~] LICENSE. -- The director may deny, suspend or

1 revoke ~~[any registration]~~ a license when the applicant or
 2 ~~[registrant]~~ licensee, or ~~[any]~~ a director, officer, employee
 3 or affiliate of the applicant or ~~[registrant]~~ licensee:

4 A. lacks a good business reputation;

5 B. has violated ~~[any]~~ a provision of the Mortgage
 6 ~~[Loan Company and Loan]~~ Broker Act;

7 C. charges, collects or receives fees for
 8 procuring, negotiating or securing ~~[any]~~ a loan in excess of
 9 the ~~[amounts]~~ amount allowed by the Mortgage ~~[Loan Company and~~
 10 ~~Loan]~~ Broker Act or by ~~[regulations]~~ rules issued by the
 11 director;

12 D. has committed fraud in connection with ~~[any]~~ a
 13 transaction subject to the Mortgage ~~[Loan Company and Loan]~~
 14 Broker Act;

15 E. has made ~~[any misrepresentations]~~ a
 16 misrepresentation or false ~~[statements]~~ statement to or
 17 concealed ~~[any]~~ an essential or material fact from ~~[any]~~ a
 18 person in the course of the ~~[loan]~~ mortgage broker or mortgage
 19 loan company business;

20 F. has knowingly made or caused to be made ~~[any]~~ a
 21 false representation of material fact or has suppressed or
 22 withheld from the director ~~[any]~~ information ~~[which]~~ that the
 23 applicant or ~~[registrant]~~ licensee possesses and ~~[which]~~ that
 24 if submitted by him would have rendered the applicant or
 25 ~~[registrant]~~ licensee ineligible ~~[to be registered]~~ for

1 licensure under the Mortgage [~~Loan Company and Loan~~] Broker
2 Act;

3 G. has violated [~~any provisions~~] a provision of
4 [~~any~~] a New Mexico statute relating to escrow agents or escrow
5 companies;

6 H. has refused to permit an examination by the
7 director of his books and records or has refused or failed,
8 within a reasonable time, to furnish [~~any~~] information or make
9 [~~any~~] a report [~~that may be~~] required by the director under
10 the provisions of the Mortgage [~~Loan Company and Loan~~] Broker
11 Act; or

12 I. has been convicted of a felony or [~~any~~]
13 misdemeanor involving moral turpitude; subject, however, to
14 the provisions of the Criminal Offender Employment Act. "

15 Section 12. A new section of the Mortgage Broker Act is
16 enacted to read:

17 "[NEW MATERIAL] ISSUANCE OF LICENSE--DISPLAY OF LICENSE--
18 PROVISIONAL LICENSE. --

19 A. The director shall issue a license to an
20 applicant for a mortgage loan company license, mortgage
21 broker's license or loan officer's license if the director
22 finds that the applicant meets all of the requirements and
23 conditions for the license as prescribed in the Mortgage
24 Broker Act.

25 B. The address of the office shall be designated

1 on the license certificate.

2 C. The license shall be at all times prominently
3 displayed in the mortgage loan company's or mortgage broker's
4 office. The branch office certificate shall be at all times
5 prominently displayed in the mortgage broker's branch office.

6 D. The license of a loan officer shall be at all
7 times prominently displayed in the office of the mortgage
8 broker for whom the loan officer primarily conducts business.

9 E. In accordance with rules promulgated by the
10 director under the Mortgage Broker Act, the director may issue
11 a provisional license to an applicant if a significant delay
12 is necessary to process the application, review information
13 related to the application or obtain information related to
14 the application. The director may revoke a provisional
15 license for any reason he could have denied issuance of the
16 license on the application."

17 Section 13. Section 58-21-9 NMSA 1978 (being Laws 1983,
18 Chapter 86, Section 9, as amended) is amended to read:

19 "58-21-9. POWERS AND DUTIES OF DIRECTOR. --

20 A. The director shall exercise general supervision
21 and control over mortgage loan companies, [~~and loan~~] mortgage
22 brokers and loan officers doing business in New Mexico. In
23 addition to the other duties imposed on him by law, and after
24 consulting with the mortgage broker advisory committee, the
25 director shall:

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

6 [~~(2) conduct such investigations as may be~~
7 ~~necessary to determine whether any person has engaged in or is~~
8 ~~about to engage in any act or practice constituting a~~
9 ~~violation of any provision of the Mortgage Loan Company and~~
10 ~~Loan Broker Act~~]; and

11 [~~(3)~~] (2) conduct examinations,
12 investigations and hearings in addition to those specifically
13 provided for by law as [~~may be~~] necessary and proper to the
14 efficient administration of the Mortgage [~~Loan Company and~~
15 ~~Loan~~] Broker Act.

16 B. The director may conduct an investigation:

17 (1) upon complaint, when it appears that a
18 mortgage loan company, [~~or loan~~] mortgage broker or loan
19 officer is conducting business in a manner injurious to
20 consumers or brokers, or when it appears that [~~any~~] a person
21 has improperly claimed an exemption pursuant to [~~Subsection E~~
22 ~~or H of~~] Section 58-21-6 NMSA 1978; or

23 (2) as may be necessary to determine whether
24 a person has engaged in or is about to engage in an act or
25 practice constituting a violation of a provision of the

1 Mortgage Broker Act. "

2 Section 14. Section 58-21-10 NMSA 1978 (being Laws 1983,
3 Chapter 86, Section 10) is amended to read:

4 "58-21-10. SUBPOENAS, OATHS AND EXAMINATION OF
5 WITNESSES--PENALTIES. --

6 A. In the conduct of [any] an examination,
7 investigation or hearing, the director may:

8 (1) compel the attendance of [any] a person
9 or obtain [any] documents by subpoena;

10 (2) administer oaths; and

11 (3) examine [any] a person under oath
12 concerning the business of any person subject to the
13 provisions of the Mortgage [~~Loan Company and Loan~~] Broker Act
14 and in connection therewith require the production of [any]
15 books, records or papers relevant to the inquiry.

16 B. In case of refusal to obey a subpoena issued to
17 [any] a person, the district court of the first judicial
18 district of Santa Fe county, upon application by the director,
19 may issue to the person an order requiring him to appear
20 before the director or the staff member designated by the
21 director [~~there~~] to produce documentary evidence if so ordered
22 or to give evidence relating to the matter under investigation
23 or in question. Failure to obey the order of the court may be
24 punished by the court as [~~a~~] contempt of court. "

25 Section 15. Section 58-21-11 NMSA 1978 (being Laws 1983,

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1 Chapter 86, Section 11) is amended to read:

2 "58-21-11. KEEPING OF RECORDS AND FILING OF REPORTS. --
3 [~~Every~~] Each mortgage loan company, [~~and loan~~] mortgage broker
4 and loan officer shall make and keep [~~such~~] accounts,
5 correspondence, memoranda, papers, books, data and other
6 records as the director by rule prescribes. [~~All~~] Records so
7 required shall be preserved for six years. [~~Every~~] Each
8 mortgage loan company and [~~loan~~] mortgage broker shall file
9 financial reports as the director by rule prescribes. If the
10 information contained in [~~any~~] a document filed with the
11 director is or becomes inaccurate or incomplete in [~~any~~] a
12 material respect, the [~~registrant~~] licensee shall file a
13 correcting amendment within thirty days. "

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

16 "58-21-12. EXAMINATION OF RECORDS. -- [~~All~~] The records
17 required to be maintained [~~by~~] pursuant to the Mortgage [~~Loan~~
18 ~~Company and Loan~~] Broker Act are subject to [~~annual~~]
19 investigations or examinations by representatives of the
20 director, within or without New Mexico, [~~together with such~~
21 ~~special or other examinations~~] as the director deems necessary
22 or appropriate in the public interest or for the protection of
23 investors. The mortgage loan company, [~~or loan~~] mortgage
24 broker or loan officer so examined shall pay a fee for each
25 [~~such~~] examination at the rate of one hundred fifty dollars

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

7 Section 17. Section 58-21-13 NMSA 1978 (being Laws 1983,
 8 Chapter 86, Section 13) is amended to read:

9 "58-21-13. PUBLIC INSPECTION OF APPLICATIONS. --

10 Applications for [~~registration~~] licensure or renewal and all
 11 papers, documents, reports and other written instruments filed
 12 with the director under the Mortgage [~~Loan Company and Loan~~]
 13 Broker Act are public documents and open to public inspection
 14 except for files on investigations relating to violations of
 15 that act, which investigations do not culminate, or have not
 16 yet culminated, in administrative, civil or criminal action. "

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

19 "58-21-14. NOTICE OF PROPOSED ORDER OF SUSPENSION,
 20 REVOCATION OR DENIAL OF [~~REGISTRATION~~] LICENSE-- HEARING. --

21 A. Notice of [~~any~~] a proposed order of suspension,
 22 revocation or denial of [~~registration~~] a license of [~~any~~] a
 23 mortgage loan company, [~~or loan~~] mortgage broker or loan
 24 officer, together with the grounds therefor, shall be given in
 25 writing, served personally or sent by certified mail to the

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1 person affected.

2 B. The mortgage loan company, [~~or loan~~] mortgage
3 broker or loan officer, upon application, is entitled to a
4 hearing; but if no such application is made within ten days
5 after the receipt of or refusal to accept [~~such~~] the notice,
6 the director shall enter a final order. "

7 Section 19. Section 58-21-15 NMSA 1978 (being Laws 1983,
8 Chapter 86, Section 15) is amended to read:

9 "58-21-15. INVESTIGATIONS BY DIRECTOR--INJUNCTIONS.--

10 A. [~~When~~] If the director has reason to believe
11 that a mortgage loan company, [~~or loan~~] mortgage broker or
12 loan officer is conducting its business in violation of the
13 Mortgage [~~Loan Company and Loan~~] Broker Act or that [~~any~~] a
14 person is engaging in the mortgage loan company or [~~loan~~]
15 mortgage broker business without [~~being registered~~] a license
16 under the provisions of the Mortgage [~~Loan Company and Loan~~]
17 Broker Act, unless exempt therefrom under the provisions of
18 Section [~~6 of that act~~] 58-21-6 NMSA 1978, he may [~~make such~~]
19 conduct an investigation as he deems necessary.

20 B. On the signed written complaint of an
21 individual, the director shall investigate the actions and
22 records of a person licensed under the Mortgage Broker Act if
23 the complaint, or the complaint and documentary or other
24 evidence presented in connection with the complaint, provides
25 reasonable cause as deemed by the director. The director

1 shall notify a mortgage loan company, mortgage broker or loan
 2 officer in writing of the complaint and of the director's
 3 investigation of the complaint.

4 [B.—When] C. If the director finds upon
 5 sufficient evidence that [any] a mortgage loan company, [~~or~~
 6 ~~loan~~] mortgage broker, loan officer or other person has
 7 engaged in or is about to engage in [any] an act or practice
 8 in violation of the Mortgage [~~Loan Company and Loan~~] Broker
 9 Act, the director may:

10 (1) refer the evidence concerning alleged
 11 violations of the Mortgage [~~Loan Company and Loan~~] Broker Act
 12 to the appropriate district attorney, or to the attorney
 13 general, who may, with or without such reference, institute
 14 the appropriate criminal proceedings under the Mortgage [~~Loan~~
 15 ~~Company and Loan~~] Broker Act; and

16 (2) summarily order the mortgage loan
 17 company, [~~or loan~~] mortgage broker, loan officer or other
 18 person to cease and desist from [~~such~~] the act or practice or
 19 apply to [any] a district court having venue to enjoin the act
 20 or practice and to enforce compliance with the Mortgage [~~Loan~~
 21 ~~Company and Loan~~] Broker Act, or both. If the director
 22 applies to the court for relief, upon proper showing, a
 23 permanent or temporary injunction, restraining order or writ
 24 of mandamus shall be granted, a receiver or conservator may be
 25 appointed for the defendant or defendant's assets and the

1 court may provide such other equitable relief as it may deem
2 appropriate. The court shall not require the director to post
3 a bond. "

4 Section 20. Section 58-21-17 NMSA 1978 (being Laws 1983,
5 Chapter 86, Section 17) is amended to read:

6 "58-21-17. ESCROW SERVICES. -- ~~[Any registrant]~~ A licensee
7 under the Mortgage ~~[Loan Company and Loan]~~ Broker Act who also
8 performs ~~[any acts]~~ an act that ~~[are]~~ is within the scope of
9 activities regulated by ~~[any statutes]~~ a statute of the state
10 relating to escrow agents shall also comply with all
11 provisions of those statutes, and ~~[registration]~~ licensure
12 under the Mortgage ~~[Loan Company and Loan]~~ Broker Act shall
13 not serve to relieve the ~~[registrant]~~ licensee from compliance
14 with the provisions of such other statutes. "

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

17 "58-21-18. ~~[PROHIBITED]~~ PERMITTED CHARGES. -- In
18 connection with ~~[any]~~ a loan originated, brokered, negotiated
19 or made by a ~~[registrant]~~ licensee under the Mortgage ~~[Loan~~
20 ~~Company and Loan]~~ Broker Act, ~~[no charges other than interest~~
21 ~~shall be made, except the following:~~

22 ~~A. the actual and reasonable expenditures for an~~
23 ~~abstract of title, title examination, title insurance~~
24 ~~premiums, property survey, appraisal fees, notary fees,~~
25 ~~preparation of deeds, mortgages or other documents, credit~~

1 ~~reports and filing and recording fees;~~

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

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

10 ~~D. such other fees as the director by regulation~~
11 ~~may permit] a broker may not collect, charge or receive broker~~
12 ~~fees in excess of six percent of the principal amount of the~~
13 ~~loan. A licensee may charge reasonable settlement,~~
14 ~~origination, transaction or other fees or charges not~~
15 ~~otherwise prohibited or limited by state or federal law. "~~

16 Section 22. Section 58-21-19 NMSA 1978 (being Laws 1983,
17 Chapter 86, Section 19, as amended) is amended to read:

18 "58-21-19. [~~PROHIBITED WITHHOLDING AND ESCROWING OF LOAN-~~
19 ~~PROCEEDS--DISCLOSURE--PENALTY]~~ COMPLIANCE WITH FEDERAL LAW. --
20 In connection with [any] a loan originated, brokered,
21 negotiated or made by a [registrant under, and which loan is
22 subject to] licensee pursuant to the Mortgage [Loan Company
23 and Loan Broker Act:

24 ~~A. the loan shall not require or provide~~
25 ~~for the withholding or escrowing of any portion of the loan~~

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1 ~~proceeds to cover any future payments, whether principal or~~
2 ~~interest or both, to the mortgagee or obligee of such loan;~~

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

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

10 ~~D. at least three business days prior to closing a~~
11 ~~loan, the registrant shall provide to the borrower disclosure~~
12 ~~in accordance with the provisions of Section 56-8-11.2 NMSA~~
13 ~~1978. Any registrant who fails to comply with the disclosure~~
14 ~~requirements or who provides information which is~~
15 ~~substantially incorrect as to the rate or charge shall forfeit~~
16 ~~all interest, charges or other advantage for the loan to the~~
17 ~~borrower] Broker Act, a licensee shall comply with all~~
18 ~~applicable federal consumer lending laws."~~

19 Section 23. Section 58-21-20 NMSA 1978 (being Laws 1983,
20 Chapter 86, Section 20) is amended to read:

21 "58-21-20. FALSE STATEMENT UNLAWFUL.--It is unlawful for
22 [any] a person to make or cause to be made in [any] a document
23 filed with the director in [any proceedings] a proceeding
24 under the Mortgage [Loan Company and Loan] Broker Act [any] a
25 statement [which] that is at the time and in the light of the

1 circumstances under which it is made false or misleading in
 2 [~~any~~] a material respect. "

3 Section 24. Section 58-21-21 NMSA 1978 (being Laws 1983,
 4 Chapter 86, Section 21) is amended to read:

5 "58-21-21. FRAUD UNLAWFUL. -- It is unlawful for [~~any~~] a
 6 mortgage company, [~~or loan~~] mortgage broker or loan officer in
 7 connection with the origination, brokering or making of [~~any~~]
 8 a mortgage loan, directly or indirectly, to:

9 A. employ [~~any~~] a device, scheme or artifice to
 10 defraud; or

11 B. engage in [~~any~~] an act, practice or course of
 12 business [~~which~~] that operates or would operate as a fraud or
 13 deceit upon [~~any~~] a person. "

14 Section 25. Section 58-21-22 NMSA 1978 (being Laws 1983,
 15 Chapter 86, Section 22) is amended to read:

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

24 Section 26. Section 58-21-23 NMSA 1978 (being Laws 1983,
 25 Chapter 86, Section 23) is amended to read:

underscored material = new
 [bracketed material] = delete

1 "58-21-23. FILING AND DESTRUCTION OF DOCUMENTS. -- A
2 document is filed when it is received by the director. The
3 director may permit the destruction of ~~[any]~~ a document filed
4 under the Mortgage ~~[Loan Company and Loan]~~ Broker Act with the
5 division or the director after:

- 6 A. six years from the date of filing documents; or
7 B. the reproduction of documents by photograph or
8 microphotograph of a permanent nature."

9 Section 27. Section 58-21-24 NMSA 1978 (being Laws 1983,
10 Chapter 86, Section 24) is amended to read:

11 "58-21-24. EFFECT ON EXISTING MORTGAGE LOAN COMPANIES OR
12 ~~[LOAN]~~ MORTGAGE BROKERS. --

13 ~~[Any]~~ A. A mortgage loan company, ~~[or loan]~~
14 mortgage broker or loan officer engaged in activities covered
15 by the Mortgage ~~[Loan Company and Loan]~~ Broker Act for a
16 period of at least ninety days prior to the effective date of
17 that act shall have thirty days from the effective date of the
18 Mortgage ~~[Loan Company and Loan]~~ Broker Act in which to file a
19 proper and complete application for a ~~[registration~~
20 ~~certificate]~~ license together with the surety bond required by
21 Section ~~[7 of that act]~~ 58-21-7 NMSA 1978 and the required
22 fee; ~~[During the thirty-day period and]~~ provided that the
23 director may extend the thirty-day period for an additional
24 thirty days if more time is required to process the
25 application on or after July 1, 2001. Until the director acts

1 on the application, the applicant shall be entitled to operate
2 without a [~~registration certificate~~] license but shall
3 otherwise comply with all other provisions of the Mortgage
4 [~~Loan Company and Loan~~] Broker Act.

5 B. A mortgage loan company or mortgage broker
6 registered under the Mortgage Broker Act as of June 30, 2001
7 shall, upon expiration of its current registration, comply
8 with the provisions of Subsection A of this section."

9 Section 28. Section 58-21-25 NMSA 1978 (being Laws 1983,
10 Chapter 86, Section 25) is amended to read:

11 "58-21-25. NO IMPAIRMENT OF OTHER REMEDIES. -- The
12 Mortgage [~~Loan Company and Loan~~] Broker Act is not intended to
13 impair any remedies available to injured parties under other
14 statutes or under common law."

15 Section 29. A new section of the Mortgage Broker Act is
16 enacted to read:

17 "[NEW MATERIAL] MORTGAGE BROKER ADVISORY COMMITTEE
18 CREATED-- MEMBERSHIP-- POWERS. --

19 A. The "mortgage broker advisory committee" is
20 created to advise and assist the director. The committee
21 shall consist of five members who are New Mexico residents.
22 Members of the committee shall be appointed by the governor.
23 The governor shall make initial appointments of two two-year
24 terms, two three-year terms and one four-year term to produce
25 staggered terms. Thereafter, appointments shall be for terms

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1 of three years. Three members of the committee shall be
2 public members who have not been licensed as mortgage brokers
3 or loan officers and have no financial interest, direct or
4 indirect, in the mortgage loan profession and two members of
5 the committee shall be licensed mortgage brokers. The
6 committee shall meet at least twice a year at the call of the
7 director.

8 B. In the event of a vacancy during a term, the
9 governor shall fill the vacancy for the unexpired remainder of
10 the term with a person who meets the qualifications of the
11 vacated position.

12 C. In addition to other powers and duties
13 delegated to it by the director, the mortgage broker advisory
14 committee shall advise the director with respect to the
15 following:

16 (1) the proposal and adoption of rules
17 relating to the licensing of mortgage brokers and loan
18 officers;

19 (2) education and experience requirements for
20 licensing mortgage brokers and loan officers;

21 (3) rules of conduct and ethics for mortgage
22 brokers and loan officers, continuing education for licensed
23 mortgage brokers and loan officers and the types of courses
24 acceptable as continuing education courses pursuant to the
25 Mortgage Broker Act;

1 (4) in response to a request by the director,
2 the granting or denying of an application or request for
3 renewal of a mortgage broker license or loan officer license;

4 (5) the form of or format for an application
5 or other document under the Mortgage Broker Act; and

6 (6) in response to a request by the director,
7 the interpretation, implementation or enforcement of the
8 Mortgage Broker Act.

9 D. Each member of the mortgage broker advisory
10 committee shall receive per diem and mileage as provided for
11 nonsalaried public officers in the Per Diem and Mileage Act
12 and shall receive no other compensation, perquisite or
13 allowance. "

14 Section 30. A new section of the Mortgage Broker Act is
15 enacted to read:

16 "[NEW MATERIAL] MORTGAGE BROKER RECOVERY FUND CREATED. --

17 The "mortgage broker recovery fund" is created in the state
18 treasury. The fund shall be administered by the director in
19 accordance with the provisions of the Mortgage Broker Act.

20 All money received by the division pursuant to the Mortgage
21 Broker Act shall be credited to the fund. The state treasurer
22 may invest money in the fund in United States bonds or
23 treasury certificates pursuant to rules as prescribed by the
24 state board of finance; however that he may not make
25 investments that impair the necessary liquidity required to

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1 satisfy judgment payments awarded pursuant to the Mortgage
2 Broker Act. All interest earned from such investments shall
3 be credited to the fund. All money in an amount in excess of
4 one hundred fifty thousand dollars (\$150,000) remaining in the
5 fund at the end of a fiscal year shall revert to the general
6 fund. If the fund falls below one hundred fifty thousand
7 dollars (\$150,000), the director may adjust the amount of fees
8 to be charged licensees. "

9 Section 31. A new section of the Mortgage Broker Act is
10 enacted to read:

11 "[NEW MATERIAL] JUDGMENT AGAINST MORTGAGE BROKER OR LOAN
12 OFFICER. --

13 A. An aggrieved person who claims a pecuniary loss
14 caused by a mortgage broker or loan officer may, within one
15 year after obtaining a final judgment and the termination of
16 all proceedings, including appeals in connection with the
17 judgment, file a verified petition with the director for
18 payment from the fund if:

19 (1) the loss is based upon fraud, knowing or
20 willful misrepresentation or wrongful conversion of funds by
21 the mortgage broker or loan officer;

22 (2) the loss arises out of a transaction for
23 which a mortgage broker or loan officer license is required;
24 and

25 (3) the loss arises out of a transaction

1 involving a mortgage loan in which the cause of action arises
2 on or after July 1, 2002.

3 B. The aggrieved person may receive payment for
4 the actual damages included in the judgment and unpaid, but
5 not in an amount exceeding ten thousand dollars (\$10,000) per
6 judgment, regardless of the number of persons aggrieved or
7 mortgage loans involved in the transaction.

8 C. The aggregate amount recoverable per judgment
9 by all claimants for losses caused by any one judgment debtor
10 shall not exceed thirty thousand dollars (\$30,000).

11 D. A copy of the petition shall be served upon the
12 director in the manner provided by law for service of a civil
13 summons.

14 E. After service of the petition upon the
15 director, he shall conduct a hearing on the petition in
16 substantially the same manner as set forth in the Uniform
17 Licensing Act. Review of the director's decision shall be in
18 the manner provided by Section 58-21-16 NMSA 1978. At the
19 hearing, the petitioner shall be required to show that he:

20 (1) is not the spouse of the judgment debtor,
21 the personal representative of the spouse or related to the
22 third degree of consanguinity or affinity to the judgment
23 debtor whose conduct is alleged to have caused the loss;

24 (2) has complied with the requirements of the
25 Mortgage Broker Act;

1 (3) has obtained a judgment of the kind
2 described in Subsection A of this section, including the
3 amount awarded and the amount owing at the date of the
4 petition;

5 (4) has had execution issued upon the
6 judgment and that the officer executing the writ has made a
7 return showing that the judgment debtor has no property within
8 the state subject to execution. If execution is levied
9 against the property of the judgment debtor, the petitioner
10 shall show that the amount realized on the sale was
11 insufficient to satisfy the judgment and shall set forth the
12 amount realized from the sale and the balance remaining due on
13 the judgment after application of the amount realized;

14 (5) has made reasonable searches and
15 inquiries to ascertain whether the judgment debtor possesses
16 real or personal property or other assets liable to be sold or
17 applied in satisfaction of the judgment, including partnership
18 assets, the judgment debtor's estate or any bond or insurance,
19 and has exercised reasonable diligence to secure payment of
20 the judgment from the assets of the judgment debtor; and

21 (6) has a judgment that is not:

22 (a) covered by a bond, insurance,
23 surety agreement or indemnity agreement;

24 (b) a loss incurred by a partner, joint
25 venturer, employer, employee or associate of the judgment

1 debtor whose conduct is alleged to have caused the loss; or a
2 corporate officer or director of a corporation in which the
3 judgment debtor is also an officer, director or employee; or

4 (c) a loss incurred by a business or
5 other entity in which the judgment debtor whose conduct is
6 alleged to have caused the loss has an interest at the time of
7 the conduct alleged to have caused the loss. "

8 Section 32. A new section of the Mortgage Broker Act is
9 enacted to read:

10 "[NEW MATERIAL] INSUFFICIENT FUNDS.--If at any time the
11 balance in the fund is insufficient to satisfy an authorized
12 claim for payment from the fund, the director shall, when
13 sufficient money has been deposited in the fund, satisfy
14 unpaid claims in the order that they were originally filed,
15 together with accumulated interest at the rate of eight
16 percent per year. "

17 Section 33. A new section of the Mortgage Broker Act is
18 enacted to read:

19 "[NEW MATERIAL] SUBROGATION.--When the director makes a
20 payment from the fund to a judgment creditor, the director
21 shall be subrogated to all rights of the judgment creditor for
22 the amounts paid out of the fund and any amount and interest
23 so recovered by the director shall be deposited in the fund.
24 The director may, pursuant to the provisions of the Uniform
25 Licensing Act, revoke, suspend or refuse to renew the license

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[bracketed material] = delete

1 of a mortgage broker or loan officer for whom payment from the
2 fund has been made in accordance with the provisions of the
3 Mortgage Broker Act. Further, the director may refuse to
4 issue or renew the license of a person for whom payment from
5 the fund has been made until that person reimburses the fund
6 for all payments made on his behalf. "

7 Section 34. A new section of the Mortgage Broker Act is
8 enacted to read:

9 "[NEW MATERIAL] WAIVER. --The failure of a person to
10 comply with the provisions of the Mortgage Broker Act shall
11 constitute a waiver of all rights pursuant to that act. "

12 Section 35. A new section of the Mortgage Broker Act is
13 enacted to read:

14 "[NEW MATERIAL] DISCIPLINARY ACTION NOT LIMITED. --Nothing
15 in the Mortgage Broker Act shall limit the authority of the
16 director to take disciplinary action against a licensee for a
17 violation of a provision of that act or of the rules of the
18 division, nor shall the repayment in full of all obligations
19 to the fund by a licensee nullify or modify the effect of
20 other disciplinary proceedings brought pursuant to the
21 provisions of that act or the rules promulgated by the
22 director. "

23 Section 36. A new section of the Mortgage Broker Act is
24 enacted to read:

25 "[NEW MATERIAL] ENFORCEMENT. --

1 A. If the director reasonably believes, whether or
2 not based upon an investigation conducted under Section
3 58-21-15 NMSA 1978, that a person has engaged, is engaging or
4 is about to engage in an act or practice constituting a
5 violation of any provision of the Mortgage Broker Act or any
6 rule promulgated pursuant to that act, the director may,
7 subject to the right of that person to obtain a subsequent
8 hearing pursuant to Subsection B of Section 58-21-14 NMSA
9 1978, issue a cease and desist order without a prior hearing
10 against the person engaged in the prohibited activity
11 directing him to desist and refrain from further illegal
12 activity.

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

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

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

1 officer;

2 (3) bar or suspend that person from licensure
3 as a mortgage loan company, mortgage broker or loan officer;
4 or

5 (4) issue an order against an applicant,
6 licensee or other person who violates that act, imposing a
7 civil penalty up to a maximum of five thousand dollars
8 (\$5,000) for each violation. "

9 Section 37. A new section of the Mortgage Broker Act is
10 enacted to read:

11 "[NEW MATERIAL] POWER OF COURT TO GRANT RELIEF. --

12 A. Upon a showing by the director that a person
13 has violated or is about to violate the Mortgage Broker Act or
14 any rule or order of the director pursuant to that act, any
15 district court may grant or impose one or more of the
16 following appropriate legal or equitable remedies:

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

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

22 (3) disgorgement;

23 (4) declaratory judgment;

24 (5) restitution to consumers;

25 (6) the appointment of a receiver or

1 conservator for the defendant or the defendant's assets;

2 (7) recovery by the director of all costs and
3 expenses for conducting an investigation or the bringing of an
4 enforcement action under that act; or

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

6 B. In determining the appropriate relief to grant,
7 the court may consider enforcement actions taken and sanctions
8 imposed by the director pursuant to Section 36 of this 2001
9 act in connection with a violation of the Mortgage Broker Act.

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

12 Section 38. REPEAL. -- Sections 58-21-26 and 58-21-27 NMSA
13 1978 (being Laws 1983, Chapter 86, Section 26 and Laws 1987,
14 Chapter 343, Section 1) are repealed.

15 Section 39. EFFECTIVE DATE. --

16 A. The effective date of the provisions of Section
17 7 of this act is January 31, 2002.

18 B. The effective date of the provisions of
19 Sections 1 through 6 and 8 through 38 of this act is July 1,
20 2001.

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[bracketed material] = delete