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HOUSE BILL 94

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Fred Luna

FOR THE MORTGAGE FINANCE AUTHORITY ACT OVERSIGHT COMMITTEE

AN ACT

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

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

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

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

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

B. "division" means the financial institutions

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1 division of the regulation and licensing department;

2 C. "escrow closing agent" means an escrow agent
3 other than a title company that acts in the normal course of
4 business as the agent of the seller and buyer of real estate
5 for the purpose of consummating a sale, including [~~but not~~
6 ~~limited to~~] the performance of the following functions:

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

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

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

16 (4) supervision of signing of documents;

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

20 (6) recordation of documents;

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

25 E. "first-time home buyer" means:

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

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

6 F. "fund" means the [~~low-income housing trust~~]
7 land title trust fund created pursuant to the provisions of
8 the [~~Low-Income Housing Trust Act~~] Land Title Trust Fund Act;

9 G. "low-income persons" means a household
10 consisting of a single individual or a family or unrelated
11 individuals living together when the household's total annual
12 income does not exceed eighty percent of the median income for
13 the area, as determined by the United States department of
14 housing and urban development and as adjusted for family size,
15 or other income ceiling determined for the area on the basis
16 of that department's findings that such variations are
17 necessary because of prevailing levels of construction costs
18 or fair market rents or unusually high or low family incomes;

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

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

25 Section 2. Section 58-18B-5 NMSA 1978 (being Laws 1994,

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1 Chapter 146, Section 10) is amended to read:

2 "58-18B-5. TRUST ACCOUNTS-- ESCROW ACCOUNTS-- SPECIAL
3 ACCOUNTS-- POOLED INTEREST-BEARING ACCOUNTS-- DISPOSITION OF
4 EARNED INTEREST ON CERTAIN ACCOUNTS. --

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

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

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

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

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1 on the funds deposited.

2 C. The interest earned on customer funds deposited
3 in a pooled interest-bearing escrow account pursuant to the
4 ~~[requirements]~~ provisions of Subsection A or B of this
5 section, net of any appropriate financial institution service
6 charges and fees, shall be remitted monthly or quarterly from
7 the financial institution in which the account is maintained
8 to the fund. The account agreement between the depositor and
9 the financial institution shall expressly provide for the
10 required remittance of interest.

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

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

22 ~~[F.—The New Mexico real estate commission shall~~
23 ~~adopt and promulgate regulations providing details regarding~~
24 ~~procedures and forms to be used in establishing and operating~~
25 ~~the accounts required pursuant to the provisions of Subsection~~

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1 ~~A of this section, and the director of the division shall do~~
2 ~~the same regarding accounts required pursuant to the~~
3 ~~provisions of Subsection B of this section. The regulations~~
4 ~~shall promote efficiency, economy and effectiveness and shall~~
5 ~~not overburden financial institutions or escrow account~~
6 ~~holders.]~~

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

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

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

19 I. A property manager shall not be required to
20 establish and maintain a pooled interest-bearing escrow
21 account pursuant to the provisions of Subsection A or B of
22 this section.

23 J. Real estate brokers and escrow closing agents
24 shall enroll and instruct participating financial institutions
25 on how to establish a pooled interest-bearing escrow account

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1 and how to authorize remittance of accrued interest less
2 service charges to the fund.

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

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

12 "58-18B-6. POOLED INTEREST-BEARING ESCROW ACCOUNTS
13 AUTHORIZED TO BE MADE AVAILABLE--COMPUTATION OF INTEREST--
14 REPORTS. --

15 A. Any depository institution regulated by the
16 division that maintains trust or escrow accounts for customers
17 may establish and make available pooled interest-bearing
18 accounts. Interest on a pooled interest-bearing account shall
19 be computed on the daily collected balance of the account or
20 as otherwise computed in accordance with the institution's
21 standard accounting practices.

22 B. Any depository institution participating in the
23 program and making a remittance of interest to the [~~low-income~~
24 ~~housing trust~~] fund pursuant to the provisions of Section [10
25 ~~of the Low-Income Housing Trust Act~~] 58-18B-5 NMSA 1978 shall,

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1 at the time of remittance, transmit a report to the [trust]
2 trustee showing:

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

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

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

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

11 C. Remittances to the [~~low-income housing trust~~]
12 fund shall be made at least quarterly, no later than the tenth
13 day of the month.

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

18 Section 4. Section 58-18B-7 NMSA 1978 (being Laws
19 1994, Chapter 146, Section 12) is amended to read:

20 "58-18B-7. USE OF MONEY [~~FOR LOANS AND GRANT PROJECTS TO~~
21 ~~PROVIDE HOUSING--ELIGIBLE ACTIVITIES~~] FROM FUND. --

22 [A. ~~Money from the fund and other sources may be~~
23 ~~used to finance in whole or in part any loans or grant~~
24 ~~projects that will provide housing for low-income persons. No~~
25 ~~more than seven percent of the fund shall be used for~~

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1 ~~administrative expenses of the trust. No less than twenty-~~
2 ~~five percent of the fund shall be invested annually in a~~
3 ~~permanent capital fund. No less than twenty-five percent of~~
4 ~~the fund shall be made available annually as grants to~~
5 ~~eligible participants or as seed capital for innovative~~
6 ~~affordable housing projects or programs.~~

7 ~~B. Activities eligible for assistance from the~~
8 ~~fund include but are not limited to:~~

9 ~~(1) new construction, rehabilitation or~~
10 ~~acquisition of low-income housing units;~~

11 ~~(2) matching funds for social services~~
12 ~~directly related to providing housing for special-need tenants~~
13 ~~in assisted projects;~~

14 ~~(3) technical assistance, design and finance~~
15 ~~services and consultation and administrative costs for~~
16 ~~eligible nonprofit community or neighborhood-based~~
17 ~~organizations;~~

18 ~~(4) administrative costs for housing~~
19 ~~assistance groups or organizations when the grant or loan will~~
20 ~~increase substantially the recipient's access to housing funds~~
21 ~~other than those available under the Low-Income Housing Trust~~
22 ~~Act;~~

23 ~~(5) shelters and related services for the~~
24 ~~homeless;~~

25 ~~(6) mortgage insurance guarantees or payment~~

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1 ~~for eligible projects;~~

2 ~~(7) down payment or closing cost assistance~~
3 ~~for eligible first-time home buyers;~~

4 ~~(8) acquisition of housing units for the~~
5 ~~purpose of preservation as low-income housing;~~

6 ~~(9) projects making housing more accessible~~
7 ~~to families with members who have disabilities; and~~

8 ~~(10) providing funding to other organizations~~
9 ~~that provide low-income property tax relief.] Money from the~~
10 ~~fund and other sources shall be used in accordance with the~~
11 ~~provisions of the Land Title Trust Fund Act. "~~

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

14 "58-28-3. LAND TITLE TRUST FUND CREATED. -- The "land
15 title trust fund" is created. The New Mexico mortgage finance
16 authority shall be the trustee for the fund. The trustee
17 shall deposit in the fund money received by it pursuant to the
18 Low-Income Housing Trust Act. "

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

21 "58-28-4. TRUST ACCOUNTS-- ESCROW ACCOUNTS-- POOLED
22 INTEREST-BEARING TRANSACTION ACCOUNTS-- DISPOSITION OF EARNED
23 INTEREST ON CERTAIN ACCOUNTS. --

24 A. A title company that maintains one or more
25 trust accounts or escrow accounts into which customer funds

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1 are deposited for use in the purchase, sale or financing of
2 real property located in New Mexico may maintain one or more
3 pooled interest-bearing transaction accounts and may deposit
4 customer funds into those accounts, except for funds required
5 to be deposited into interest-bearing accounts or investments
6 under instructions from one or more of the parties to a
7 transaction that provide for the payment of interest to be
8 earned on the deposited funds to a person other than the title
9 company. A pooled interest-bearing transaction account
10 established pursuant to the provisions of this section shall
11 be maintained in the name of the title company, but the
12 trustee shall be named and shown as the beneficial owner of
13 the account income or interest. A title company maintaining
14 one or more pooled interest-bearing transaction accounts shall
15 not be paid or receive any interest earned on funds deposited
16 in the accounts except for the purpose of remitting net earned
17 interest to the trustee pursuant to the provisions of this
18 section.

19 B. The interest earned on customer funds deposited
20 in a pooled interest-bearing transaction account pursuant to
21 the requirements of Subsection A of this section, net of any
22 service charges and fees that a depository institution charges
23 to regular, non-title company depositors and net of any
24 reasonable charge for preparation and transmittal of any
25 required report pursuant to the provisions of Subsection F of

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1 this section, shall be remitted monthly or quarterly either
2 directly to the fund or to the title company for its
3 remittance to the fund. Alternatively, the depository
4 institution may credit the title company account with the net
5 interest earned either monthly or quarterly. Interest accrued
6 after deducting the allowable charges and fees shall be
7 treated as interest earned by the trustee and reported as such
8 by the depository institution.

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

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

17 E. The rate of interest payable on a pooled
18 interest-bearing transaction account shall not be less than
19 the rate customarily paid by the depository institution to
20 regular, non-title company depositors for similar accounts.
21 Interest shall be computed in accordance with the depository
22 institution's standard accounting practice. Higher rates
23 offered by the depository institution to customers whose
24 deposits exceed certain time or quantity minima, such as those
25 offered in the form of certificates of deposit, may be

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1 obtained by the title company on some or all of the deposited
2 funds so long as there is no impairment of the right to
3 withdraw or transfer principal, subject only to the notice
4 period the depository institution is required to observe by
5 law or regulation.

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

10 (1) the name of the title company maintaining
11 the account from which remittance is made;

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

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

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

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

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 3, 1999
7

8 Mr. Speaker:
9

10 Your TAXATION & REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 94
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 APPROPRIATIONS & FINANCE COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Jerry W. Sandel, Chairman
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HTRC/HB 94

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4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 13 For 0 Against

11 Yes: 13

12 Excused: Silva, Stell

13 Absent: None

15 J: \99BillSWP\H0094

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 February 19, 1999

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6
7 Mr. Speaker:

8
9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 94

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

15
16 Respectfully submitted,

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20 _____
21 Max Coll, Chair man

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: Buffett, Parsons, Salazar, Taylor, Watchman

Absent: None

J: \99BillSWP\H0094

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 10, 1999

Mr. President:

Your WAYS & MEANS COMMITTEE, to whom has been referred

HOUSE BILL 94

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Carlos R. Cisneros, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 4 For 1 Against

Yes: 4

No: Rawson

Excused: Carraro, Duran, Jennings, Kidd

Absent: None

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