

ARTICLE 28
Land Title Trust Funds

58-28-1. Short title.

Sections 1 through 8 [58-28-1 to 58-28-8 NMSA 1978] of this act may be cited as the “Land Title Trust Fund Act”.

58-28-2. Definitions.

As used in the Land Title Trust Fund Act [58-28-1 NMSA 1978]:

- A. “committee” means the land title trust fund advisory committee;
- B. “depository institution” means any bank, savings and loan association or credit union authorized by federal or state law to do business in New Mexico and insured by the federal deposit insurance corporation or the national credit union administration;
- C. “division” means the financial institutions division of the regulation and licensing department;
- D. “eligible organization” means a nonprofit corporation whose primary purpose is to provide affordable housing and that is qualified for tax exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; a unit of state or local government dealing with housing; a local or regional housing authority or a tribal agency dealing with housing;
- E. “fund” means the land title trust fund;
- F. “low-income persons” means a household consisting of a single individual, a family or unrelated individuals living together if the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development, and as adjusted for family size or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;
- G. “pooled interest-bearing transaction account” means a trust or escrow account made available by a depository institution in the form of a negotiable order of withdrawal account, sweep account or other interest-bearing account;
- H. “title company” means a title insurer or title insurance agent as defined in and regulated pursuant to the New Mexico Title Insurance Law [59A-30-1 NMSA 1978]; and
- I. “trustee” means the New Mexico mortgage finance authority.

58-28-3. Land title trust fund created.

The "land title trust fund" is created. The New Mexico mortgage finance authority shall be the trustee for the fund. The trustee shall deposit in the fund money received by it pursuant to the Low-Income Housing Trust Act [58-18B-1 NMSA 1978].

58-28-4. Trust accounts; escrow accounts; pooled interest-bearing transaction accounts; disposition of earned interest on certain accounts.

A. A title company that maintains one or more trust accounts or escrow accounts into which customer funds are deposited for use in the purchase, sale or financing of real property located in New Mexico may maintain one or more pooled interest-bearing transaction accounts and may deposit customer funds into those accounts, except for funds required to be deposited into interest-bearing accounts or investments under instructions from one or more of the parties to a transaction that provide for the payment of interest to be earned on the deposited funds to a person other than the title company. A pooled interest-bearing transaction account established pursuant to the provisions of this section shall be maintained in the name of the title company, but the trustee shall be named and shown as the beneficial owner of the account income or interest. A title company maintaining one or more pooled interest-bearing transaction accounts shall not be paid or receive any interest earned on funds deposited in the accounts except for the purpose of remitting net earned interest to the trustee pursuant to the provisions of this section.

B. The interest earned on customer funds deposited in a pooled interest-bearing transaction account pursuant to the requirements of Subsection A of this section, net of any service charges and fees that a depository institution charges to regular, non-title company depositors and net of any reasonable charge for preparation and transmittal of any required report pursuant to the provisions of Subsection F of this section, shall be remitted monthly or quarterly either directly to the fund or to the title company for its remittance to the fund. Alternatively, the depository institution may credit the title company account with the net interest earned either monthly or quarterly. Interest accrued after deducting the allowable charges and fees shall be treated as interest earned by the trustee and reported as such by the depository institution.

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

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

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

deposited funds so long as there is no impairment of the right to withdraw or transfer principal, subject only to the notice period the depository institution is required to observe by law or rule.

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

- (1) the name of the title company maintaining the account from which remittance is made;
- (2) the rate of interest used to compute the earned interest and the amount of earned interest;
- (3) the amount, if any, of depository institution service charges and fees deducted and any charge for the preparation and transmittal of the report; and
- (4) the account balance as of the ending date of the reporting period.

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

H. Remittances to the fund shall be made at least quarterly, no later than ten days after the statement cutoff for that account if made by the depository institution and no later than thirty days after receipt of remittance or credit from the depository institution if made by the title company.

I. The trustee shall adopt and promulgate rules regarding the obligations of depository institutions pursuant to the provisions of the Land Title Trust Fund Act [58-28-1 NMSA 1978] and the Low-Income Housing Trust Act [58-18B-1 NMSA 1978].

58-28-5. Use of money; eligible activities.

A. Money from the fund and other sources may be used to finance in whole or in part any loans or grant projects that will provide housing for low-income persons and for other uses specified in this section. Money deposited into the fund may be used annually as follows:

- (1) no more than five percent of the fund shall be used for expenses of administering the fund;
- (2) no less than twenty percent of the fund shall be invested in a permanent capital fund, the interest on which may be used for purposes specified in this section;
- (3) no less than fifty percent of the fund shall be allocated to eligible organizations to make housing more accessible to low-income persons;
- (4) no more than ten percent of the fund may be allotted for use to provide scholarships for New Mexico high school graduates and general equivalency diploma recipients at New Mexico public post-secondary educational institutions under a program approved by the trustee under the administration of a nonprofit statewide land title association; and
- (5) the remaining balance may be allocated to eligible organizations for other housing-related programs for the benefit of the public as specifically approved by the trustee from time to time.

B. Money in the capital fund authorized in Paragraph (2) of Subsection A of this section may be invested in fully amortizing interest-bearing mortgages secured by real property in New Mexico, the interest on which may be used for purposes specified in this section.

58-28-6. Conflict with federal requirements.

If any part of the Land Title Trust Fund Act [58-28-1 NMSA 1978] is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of the Land Title Trust Fund Act shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the state.

58-28-7. Matching funds.

Money from the fund may be used to match federal, local or private money to be used for projects authorized under the Land Title Trust Fund Act [58-28-1 NMSA 1978].

58-28-8. Land title trust fund advisory committee created; functions.

A. The “land title trust fund advisory committee” is created. The committee shall consist of seven persons:

- (1) the chairman of the trustee or his designee, who shall serve as chairman of the committee;
- (2) two representatives of the land title industry appointed by the governor;
- (3) one representative of the banking industry and one representative of the real estate industry appointed by the president pro tempore of the senate; and
- (4) one representative of the mortgage lending industry and one representative of the real estate industry appointed by the speaker of the house of representatives.

B. Of the first committee members appointed, two shall be appointed for terms of five years, two shall be appointed for terms of four years and two shall be appointed for terms of three years. Thereafter, appointed members shall be appointed for terms of five years. Members shall serve at the pleasure of their respective appointing authorities, and vacancies shall be filled by the appropriate appointing authority. Any member of the committee shall be eligible for reappointment.

C. The committee shall be advisory to the trustee and shall be subject to oversight by the Mortgage Finance Authority Act [58-18-1 NMSA 1978] oversight committee.

D. The committee shall review all project applications and make recommendations to the trustee for funding them. The committee shall not be involved in or advisory to the trustee in matters relating to the investment of the fund.

- E. The committee shall adopt and promulgate rules and regulations regarding:
- (1) the time, place and procedures of committee meetings;
 - (2) the procedures for the review of and standards for recommending applications for loans or grant projects; and
 - (3) the obligations of title companies pursuant to the provisions of the Land Title Trust Fund Act [58-28-1 NMSA 1978].