

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 597

By: Ford of the Senate

and

Thornbrugh of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mortgage brokers; providing short title; defining terms; stating exemptions; prohibiting persons from engaging in the business of mortgage broker without a license; noting certain exceptions; stating licensure requirements and requiring submission of application and payment of certain fees to Commission on Consumer Credit; providing for denial of license; stating term of license; setting fees; requiring certain persons be granted an initial license; requiring mortgage broker have certain agreement with lender; requiring contract be in writing; requiring mortgage broker provide written disclosure of certain fees and costs to borrower; construing language; requiring mortgage broker transmit certain documents within certain time period if borrower is unable to obtain loan; prohibiting certain compensation unless borrower obtains loan; providing certain exception; requiring mortgage broker deposit in trust account monies received from borrowers for third-party services and stating conditions related thereto; limiting withdrawal of funds to certain purposes; providing for payment if interest and monies remaining in fund; requiring payment of third-party providers within certain time period; stating requirements for maintenance of records; authorizing Commission to investigate business transactions of licensees and impose certain penalties under certain conditions; stating acts which constitute cause; providing for issuance of injunction or restraining order; providing criminal penalty; creating advisory committee and stating duties; creating revolving fund and providing for disbursement of monies accruing to fund; authorizing use of certain fund for reimbursement of persons who suffer monetary damage by person required to be licensed under this act; amending 24 O.S. 1991, Section 132, as amended by Section 1, Chapter 210, O.S.L. 1992 (24 O.S. Supp. 1996, Section 132), which relates to credit service organizations; modifying definition; amending 59 O.S. 1991, Section 858-301, which relates to licensure of real estate brokers and sales associates; including certain persons in exceptions to licensure provisions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2081 of Title 59, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 11 of this act shall be known and may be cited as the "Mortgage Broker Licensure Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2082 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan;

2. "Commission" means the Commission on Consumer Credit;

3. "Employee" means an individual who has an employment relationship acknowledged by both the employee and the mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws;

4. "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws;

5. "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a person required to be licensed as a mortgage broker, or an individual who represents a person required to be licensed as a mortgage broker, and who performs any of the services specified in paragraph 6 of this section;

6. "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain, performs the following services:

- a. makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan, or
- b. holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan;

7. "Person" means an individual, corporation, company, limited liability company, partnership, association, or similar legal entity;

8. "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units; and

9. "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2083 of Title 59, unless there is created a duplication in numbering, reads as follows:

The following are exempt from all provisions of this act:

1. Any person authorized to do business under the laws of this state or the United States regulating commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C., Section 856 and the affiliates, subsidiaries, and service corporations thereof;

2. An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

3. Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

4. Any mortgage broker approved and subject to auditing by the Federal National Mortgage Association, the Government National Mortgage Association, the Department of Housing and Urban Development (HUD), or the Federal Home Loan Mortgage Corporation;

5. The United States of America, the State of Oklahoma, any other state and any political subdivision of this state, or their instrumentalities;

6. A real estate broker or sales associate licensed by this state who assists the borrower in obtaining financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker or associate and who receives only the customary real estate broker's or associate's commission in connection with the transaction;

7. A real estate broker or sales associate licensed by this state who provides only information regarding rates, terms, and lenders, who receives a fee for providing such information, who conforms to all rules of the Oklahoma Real Estate Commission with respect to the providing of such service, and who discloses on a form approved by the Commission that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, such real estate broker or sales associate shall not be exempt if he or she does any of the following:

- a. holds himself or herself out as able to obtain a loan from a lender for another,
- b. accepts a loan application, or submits a loan application to a lender,
- c. accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are

paid before, upon, or after the closing of the loan,
or

- d. negotiates rates or terms with a lender on behalf of a borrower; and

8. An employee of a person licensed or exempt from licensing under this act when acting within the scope of their employment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2084 of Title 59, unless there is created a duplication in numbering, reads as follows:

Unless exempt from licensure under this act, a person may not engage in the business of a mortgage broker without first obtaining and maintaining a license under this act. However, a person who independently contracts with a licensed mortgage broker to perform mortgage broker services need not be licensed if the licensed mortgage broker and the independent contractor have on file with the Commission on Consumer Credit a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this act or rules promulgated pursuant to the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2085 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. A person of good moral character who has experience in the residential mortgage loan industry or real estate sales or lending industry, or has applicable educational requirements as established by rule of the Commission on Consumer Credit, may make application to the Commission for a mortgage broker license.

2. Application for a mortgage broker license shall be made upon forms prescribed by the Commission and shall be accompanied by a nonrefundable application fee as set by rule of the Commission and any information and documents the Commission may require.

3. Upon approval by the Commission of the application and payment of the license fee provided for in this act the Commission

shall issue to the applicant a license which shall authorize the applicant to act as a mortgage broker.

B. A license issued under this act shall be valid for a period of three (3) years, unless otherwise revoked or suspended by the Commission.

C. Initial and renewal license fees shall be Three Hundred Dollars (\$300.00) for each three-year period. These fees shall be deposited in the Oklahoma Mortgage Brokers Recovery Fund.

D. A person may be denied a license for any of the causes set forth in subsection B of Section 8 of this act.

E. A residential mortgage broker who holds a current license as of the effective date this act which was issued under the Credit Services Organization Act shall be granted an initial license by the Commission pursuant to the provisions of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2086 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public.

B. Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

C. 1. Upon receipt of a loan application and before the receipt of any monies from a borrower, a mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule of the Commission on Consumer Credit.

2. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable.

3. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

D. If a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. The mortgage broker must provide the copies or transmit the documents within five (5) business days after the borrower has made the request in writing.

E. 1. Except as otherwise permitted by this subsection, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

2. A mortgage broker may solicit or receive fees for third-party provider goods or services in advance. The mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2087 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A mortgage broker shall deposit, prior to the end of the next business day, all monies received from borrowers for third-party provider services in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of borrowers. Monies maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds.

B. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. Any monies remaining in the trust account after payment to third-party providers shall be refunded to the borrower.

C. The mortgage broker shall pay third-party providers no later than thirty (30) days after completion of the third-party service.

D. A mortgage broker shall maintain accurate, current, and readily available records of the trust account until at least three (3) years have elapsed following the effective period to which the records relate. The records shall be subject to audit by the Commission on Consumer Credit pursuant to an investigation conducted under Section 8 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2088 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Commission on Consumer Credit may upon its own motion, and shall upon written complaint filed by any person, investigate the business transactions of any licensed mortgage broker and, after notice and hearing, may, for any cause as set forth in subsection B of this section, impose the following sanctions:

1. Reprimand;
2. Probation for a specified period of time;
3. Suspension of license for specified periods of time;
4. Revocation of license;
5. Imposition of an administrative fine which shall be not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00) for each violation nor exceed Five Thousand Dollars (\$5,000.00) for all violations resulting from a single incident or transaction; or

6. Any combination of sanctions as provided for by paragraphs 1 through 5 of this subsection.

B. Cause shall be established upon clear and convincing evidence that any licensee or its employee has performed or has

attempted to perform, or is performing or is attempting to perform any of the following acts:

1. Making a materially false or fraudulent statement in an application for license;

2. Making substantial misrepresentations or false promises in the conduct of business as a mortgage broker or through advertising;

3. Failing to escrow, account for, or remit monies or documents as required by this act;

4. Commingling monies as prohibited by this act;

5. Having been convicted in a court of competent jurisdiction of having violated any provision of the federal fair housing laws, 42 U.S.C., Section 3601 et seq.;

6. Having been convicted in a court of competent jurisdiction in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses;

7. Failing to pay the fees required under this act or to comply with an order lawfully issued pursuant to this act; or

8. Having violated any provision of this act.

C. In addition to any sanctions authorized by this act, the Commission, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of this act has allegedly occurred for an order enjoining or restraining the licensee from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2089 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other penalties provided by law, any person without a license as required by this act who engages in the business of a mortgage broker or who willingly and knowingly violates any provision of this act, upon conviction, shall be

guilty of a misdemeanor which shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) for each violation. Each violation shall be a separate offense under this section.

B. In addition to any civil or criminal actions authorized by law, the Commission on Consumer Credit, the Attorney General, or the district attorney may apply to the district court in the county in which a violation of this act has allegedly occurred for an order enjoining or restraining the unlicensed person from continuing the acts specified in the complaint. The court may grant any temporary or permanent injunction or restraining order, without bond, as it deems just and proper.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2090 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Mortgage Broker Advisory Committee" which shall advise the Commission on Consumer Credit on matters pertaining to the licensure, regulation, and discipline of mortgage brokers required to be licensed under the provisions of this act.

B. 1. Except as provided in paragraph 2 of this subsection, the Committee shall be comprised of three (3) licensed mortgage brokers, appointed by the Governor. Each member shall serve a term of three (3) years and until a successor is appointed and qualified. Members may be removed for misconduct, incompetency, or neglect of duty.

2. Members initially appointed to the Committee shall have been active in the mortgage broker business in this state for at least two (2) years prior to appointment and shall complete licensure requirements within one (1) year of appointment. Initial members shall serve staggered terms as follows: one member shall be appointed for a term of one (1) year, one member shall be appointed for a term of two (2) years, and one member shall be appointed for a term of three (3) years. Thereafter, these members may be appointed for three-year terms of office. All terms of office shall expire on October 31.

C. The Committee shall elect a chair from among its membership. Meetings shall be held at least quarterly. Special meetings may be called by request of the Commission. A majority of the Committee shall constitute a quorum for the transaction of business. Each member shall receive reimbursement for travel expenses in accordance with the provisions of the State Travel Reimbursement Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2091 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created in the State Treasury a revolving fund for the Commission on Consumer Credit to be designated the "Oklahoma Mortgage Brokers Recovery Fund". The fund shall consist of monies received by the Commission as license fees and any administrative fines imposed pursuant to this act. The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the administrative direction of the Administrator of the Commission. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Commission for the purposes specified in subsection B of this section. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

2. Monies which have accrued to the fund in excess of Ten Thousand Dollars (\$10,000.00) as of June 30th of each year shall be deposited to the credit of the General Revenue Fund.

B. Monies in the fund shall be used to reimburse any person in an amount not to exceed Five Thousand Dollars (\$5,000.00) who has been adjudged by a court of competent jurisdiction to have suffered monetary damages by a person required to have a license under this act in any transaction for which a license is required under this act because of the acquisition of money or property by fraud, misrepresentation, deceit, false pretenses, artifice,

trickery, or by any other act which would constitute a violation of this act.

SECTION 12. AMENDATORY 24 O.S. 1991, Section 132, as amended by Section 1, Chapter 210, O.S.L. 1992 (24 O.S. Supp. 1996, Section 132), is amended to read as follows:

Section 132. As used in the Credit Services Organization Act:

1. "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization;
2. a. "Credit services organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:
 - (1) improving a buyer's credit record, history, or rating,
 - (2) obtaining an extension of credit for a buyer, or
 - (3) providing advice or assistance to a buyer with regard to division (1) or (2) of this subparagraph;
- b. "Credit services organization" does not include:
 - (1) any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act,
 - (2) any bank, savings and loan institution or credit union whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration or a subsidiary of such

- bank, savings and loan institution or credit union,
- (3) any nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code,
 - (4) any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license,
 - (5) any person licensed to practice law in this state if the person renders services within the course and scope of his or her practice as an attorney,
 - (6) any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation,
 - (7) any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C., Sections 1681 through 1681t, ~~or~~
 - (8) any person authorized to file electronic income tax returns who does not receive any consideration for refund anticipation loans; or
 - (9) any residential mortgage broker as defined in the Mortgage Broker Licensure Act;

3. "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes, or to anyone whose principal occupation is agricultural in nature; and

4. "Administrator" means the Administrator of the Department of Consumer Credit.

SECTION 13. AMENDATORY 59 O.S. 1991, Section 858-301, is amended to read as follows:

Section 858-301. It shall be unlawful for any person to act as a real estate broker or real estate sales associate, or to hold himself or herself out as such, unless ~~he~~ the person shall have

been licensed to do so under this Code. ~~Provided, however, that~~
However, nothing herein contained in this section shall:

1. Prevent any person, partnership, association or corporation, or the partners, officers or employees of any partnership, association or corporation, from acquiring real estate for its own use, nor shall anything ~~herein contained in~~ this section prevent any person, partnership, association or corporation, or the partners, officers or employees of any partnership, association or corporation, as owner, lessor or lessee of real estate, from selling, renting, leasing, exchanging, or offering to sell, rent, lease or exchange, any real estate so owned or leased, or from performing any acts with respect to such real estate when such acts are performed in the regular course of, or as an incident to, the management, ownership or sales of such real estate and the investment therein;

2. Apply to persons acting as the attorney-in-fact for the owner of any real estate authorizing the final consummation by performance of any contract for the sale, lease or exchange of such real estate;

3. In any way prohibit any attorney-at-law from performing ~~his~~ the duties of the attorney as such, nor shall this Code prohibit a receiver, trustee in bankruptcy, administrator, executor, or his or her attorney, from performing his or her duties, or any person from performing any acts under the order of any court, or acting as a trustee under the terms of any trust, will, agreement or deed of trust; ~~or~~

4. Apply to any person acting as the resident manager for the owner or an employee acting as the resident manager for a licensed real estate broker managing an apartment building, duplex, apartment complex or court, when such resident manager resides on the premises and is engaged in the leasing of property in connection with ~~his~~ the employment of the resident manager;

5. Apply to any person who engages in such activity on behalf of a corporation or governmental body, to acquire easements, rights-of-way, leases, permits and licenses, including any and all amendments thereto, and other similar interests in real estate,

for the purpose of, or facilities related to, transportation, communication services, cable lines, utilities, pipelines, or oil, gas, and petroleum products; or

6. Apply to any person who engages in such activity in connection with the acquisition of real estate on behalf of an entity, public or private, which has the right to acquire the real estate by eminent domain.

SECTION 14. This act shall become effective November 1, 1997.

46-1-1529

JY