

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1168

By: Shurden

AS INTRODUCED

An Act relating to professions and occupations; providing short title; stating purpose of act; limiting application of act and stating exemptions from requirements of act; defining terms; requiring licensing of settlement agents by Insurance Commissioner; prohibiting holding oneself out as settlement agent without license; stating actions for which licensed settlement agent may receive compensation; requiring settlement agents be bonded, have certain insurance, and make certain deposit of funds; providing for ownership of funds, segregation of funds, and disbursement of funds, requiring written settlement statements; requiring retention of certain records; authorizing Insurance Commissioner to adopt and promulgate rules and issue orders; 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 2101 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Consumer Real Estate Settlement Protection Act".

B. The purpose of this act is to authorize existing licensing authorities in this state to require persons performing escrow, closing, or settlement services to comply with certain consumer protection safeguards relating to licensing, financial responsibility, and the handling of settlement funds.

C. This act applies only to transactions involving the purchase of or lending on security or real estate located in this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2102 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Escrow" means written instruments, money, or other items deposited by a party with a settlement agent for delivery to other persons upon the performance of specified conditions or the happening of a certain event;

2. "Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include, but are not limited to, placing orders for title insurance, placing orders for abstracts, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements, determining that all closing documents conform to the parties' contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents, and sending the recorded documents and the title policies to the appropriate parties;

3. "Licensing authority" means the Insurance Commissioner of this state;

4. "Party to the real estate transaction" means, with respect to a real estate transaction, a lender, seller, purchaser, or borrower, and with respect to a corporate purchaser, any entity which is a subsidiary of or under common ownership with that corporate purchaser;

5. "Person" means a natural person, partnership, association, cooperative, corporation, limited liability company, trust, or other legal entity;

6. "Settlement agent" means a person other than a party to the real estate transaction who provides escrow, closing, or settlement services in connection with a transaction related to real estate in this state and who is listed as the settlement agent on the settlement statement for such transaction; and

7. "Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate including, but not limited to, a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601, et seq., as amended, and the regulations thereunder.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2103 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A person shall not hold himself or herself out to be, or act in the capacity of a settlement agent unless licensed by the Insurance Commissioner of this state. A lender, seller, purchaser, or borrower may not contract with any person to act in the capacity of a settlement agent with respect to real estate settlements in this state unless the person is licensed by the Insurance Commissioner of this state as a settlement agent. The Insurance Commissioner is hereby authorized to take actions as necessary to engage in the licensing of settlement agents.

B. A settlement agent operating in compliance with the requirements of this act or a party to the real estate transaction may provide escrow, closing, or settlement services and receive compensation for such services.

C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this act and its licensing authority regarding licensing, financial responsibility, errors and

omissions or malpractice insurance policies, fidelity bonds, dishonest employee insurance policies, audits, escrow account analysis, and records retention.

D. A settlement agent shall, to the satisfaction of the Insurance Commissioner:

1. Obtain errors and omissions insurance from a company licensed to do business in this state in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per claim and an aggregate limit of Five Hundred Thousand Dollars (\$500,000.00) with a deductible no greater than Twenty-five Thousand Dollars (\$25,000.00); provided in the event errors and omissions insurance is unavailable generally, the Insurance Department of this state shall promulgate rules for alternative methods to comply with this paragraph;

2. Obtain a blanket fidelity bond covering all licensed settlement employees in an amount acceptable to the title insurance company appointing the agent, but in no event in an amount less than One Hundred Fifty Thousand Dollars (\$150,000.00) and with a deductible not larger than fifteen percent (15%) of the bond penalty. The bond shall be executed by an insurance company authorized to do business in this state. The required bond premium shall be paid by the settlement agent. Except for the inception of this requirement, the bond term must conform to the term of the settlement agent license, and documentation of coverage must be furnished to the Insurance Department at the time of license renewal. If a bonding company cancels a bond, the cancellation shall not be effective until thirty (30) days after the bonding company must give the Insurance Department of this state receives written notice from the bonding company; and

3. Post a blanket surety bond in the form prescribed by the Insurance Department of not less than One Hundred Fifty Thousand Dollars (\$150,000.00). The bond shall be executed by an insurance

company authorized to do business in this state. The bond shall secure performance by the settlement agent of his fiduciary duties and responsibilities. The bond shall remain in full force and effect until thirty (30) days after the Insurance Commissioner receives written notice that the bonding company intends to cancel the bond. The premium required for the bond shall be paid by the settlement agent. The aggregate liability of the surety for any and all breaches of the conditions of the bond shall in no event exceed the penal sum of the bond.

E. Title insurance underwriters are exempt from the requirement of obtaining a surety bond.

F. Failure to comply with the above errors and omissions and bonding requirements shall constitute grounds for immediate forfeiture of the settlement agent's license.

G. The settlement agent shall, at the agent's expense, have an audit of its escrow accounts conducted by an independent certified public account at least once each consecutive twelve-month period. The settlement agent shall provide a copy of its audit report to the Insurance Commissioner no later than sixty (60) days after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent shall also provide a copy of the audit report to each title insurance company it represents. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent may allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations promulgated by the Insurance Department of this state, as appropriate, at least once each consecutive twelve-month period. Each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority not later than sixty (60) days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the

results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2104 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing shall be deposited to a fiduciary trust account or accounts in a financial institution licensed to do business in this state not later than the close of the next business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds are accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. A settlement statement which has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. All funds received or deposited with settlement agent shall be good funds as described herein.

1. "Good funds" shall mean:

- a. cash or wire transfers,
- b. certified checks, cashier's checks, and teller's checks, as further described in subparagraph g of this paragraph,

- c. uncertified funds in the amount of less than One Thousand Five Hundred Dollars (\$1,500.00), including checks, traveler's checks, money orders, and negotiable orders of withdrawal; provided, multiple items shall not be used to avoid the One Thousand Five Hundred Dollar (\$1,500.00) limitation,
- d. uncertified funds in the amount of One Thousand Five Hundred Dollars (\$1,500.00) or more, drafts and any other items when collected by the financial institution,
- e. State of Oklahoma Warrants,
- f. United States Treasury Checks,
- g. checks drawn on a bank, savings bank or savings and loan association insured by the Federal Deposit Insurance Corporation and for which a transaction code has been issued pursuant to, and in compliance with, a fully executed immediately available funds procedure agreement with such bank, savings bank, or savings and loan association,
- h. checks by city or county governments located in this state, and
- i. a check from a licensed settlement agent as defined in this act.

2. "Received and deposited" means that good funds are in the possession of an employee or representative of the trustee and a record of receipt has been entered on the books of the trustee, but only if the funds are actually delivered for deposit to the financial institution in a timely manner, which shall not exceed three (3) business days as defined in Federal Reserve Board Regulations CC, 12 CFE Part 229 after the funds are received. If a trustee agrees to postponement of deposit for a period of time longer than three (3) days after the date the funds are received,

then the funds shall be deposited not later than the date set out in the written instructions. In case of a wire transfer or other direct deposit, good funds shall be considered to be "received and deposited" when the financial institution notifies the trustee that the funds have been received.

3. "Trust fund account" means an account maintained at a financial institution for holding and disbursing funds to be paid to and on behalf of parties to the transaction and which are subject to annual audit.

4. "Transaction" means the purchase and sale, mortgage, or other act for which a trustee receives trust funds and a guaranty file is opened.

5. "Trustee" as used in this act means a title insurance company, title insurance agent, direct operation, or settlement agent that maintains a trust funds account.

6. "Financial institution" as used in this act means the financial institution in which the trust fund account is maintained.

7. "Cashier's checks", "certified checks" and "teller's checks" as used in this section shall have the same meaning as set forth in 12 U.S.C. 4001, et seq. and Federal Reserve Board Regulation CC 12 C.F.R., Part 229; provided that the check is drawn upon a bank, savings bank, savings and loan association or credit union insured by the FDIC or the National Credit Union Share Insurance Fund. In addition, for teller's checks, both the drawer and drawee must be insured by the FDIC or the National Credit Union Share Insurance Fund.

8. Good funds in the amount equal to all disbursements must be received and deposited before any disbursements may be made. Partial disbursements, prior to the receipt and deposit of good funds, are not permitted.

9. Even though funds are defined as good funds in this section, a trustee is not required to disburse if reasonable business judgement would indicate that the funds may not be collected.

D. All settlement statements for transactions related to real estate governed by this act shall be in writing and identify, by name and business address, the settlement agent.

E. Nothing in this section is intended to amend, alter or supersede other sections of this act, or the laws of this state or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2105 of Title 59, unless there is created a duplication in numbering, reads as follows:

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this act. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five (5) years after the settlement is completed. The appropriate licensing authority may prescribe the specified record entries and documents to be kept.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2106 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner of this state may adopt and promulgate rules and issue orders as necessary to carry out the Consumer Real Estate Settlement Protection Act.

SECTION 7. This act shall become effective November 1, 2000.

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