ENGROSSED SENATE
BILL NO. 1385

By: Johnson (Mike) of the Senate

and

Young of the House

An Act relating to insurance; creating the Oklahoma Homeowner's Private Mortgage Insurance Protection Act; providing short title; defining terms; requiring cancellation of private mortgage insurance under certain circumstances; providing for certain documentation of property value; setting time for certain appraisal; requiring servicer to provide a copy of the appraisal to the mortgagor within certain time; providing for cancellation within certain time; providing for reimbursement of certain premiums; providing exceptions; providing for certain rules; providing penalties; directing deposit of certain penalty payments; 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 3639.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Homeowner's Private Mortgage Insurance Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3639.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Appreciation" means an increase in value of a particular property;

2. "Loan-to-value ratio" means the ratio of the amount of the loan to the appraised value or sales price, whichever is more, expressed as a percentage;

3. "Mortgagor" means the original borrower under a residential mortgage or his or her successors or assignees;

4. “Private mortgage insurance” means mortgage insurance that insures lenders against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note, bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate which contains a residential building. However, private mortgage insurance does not include mortgage insurance made available under the National Housing Act, 12 U.S.C., Section 1701 et seq., Title 38, or Title V of the Housing Act of 1949, 42 U.S.C., Section 1471 et seq.;

5. “Servicer” means the person responsible for servicing of a loan including the person who makes or holds a loan if such person also services the loan. The term does not include:

a. the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to 12 U.S.C., Section 1823(c) or as receiver or conservator of an insured depository institution, and

b. the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by:

(1) termination of the contract for servicing the loan for cause,

(2) commencement of proceedings for bankruptcy of the servicer, or

(3) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer, or an entity by which the servicer is owned or controlled; and

6. "Residential mortgage transaction" means a transaction consummated in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against a single-family dwelling that is the principal residence of the mortgagor to finance the acquisition, initial construction or refinancing of that dwelling.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3639.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In addition to the cancellation and termination provisions for private mortgage insurance on a residential mortgage transaction, as provided in the Homeowner's Protection Act of 1998, 12 U.S.C., Section 4901 et seq., on loans originated on or after the effective date of this act, a servicer shall cancel private mortgage insurance on any residential mortgage transaction if the mortgagor makes a written request to the servicer for such a cancellation, and the loan-to-value ratio of the property is seventy-eight percent (78%) or less due to either:

1. Improvements made to the property that increase the value of the property; or

2. An increase in the value of the property as a result of appreciation.

B. The servicer may require the mortgagor to provide documentation that demonstrates the higher property value of the residential property. At the discretion of the servicer, one of the following appraisals may be required of the mortgagor at his or her expense to document the higher property value:

1. An appraisal by an appraiser who is on the list of approved appraisers of the servicer;

2. A Broker’s Price Opinion (BPO); or

3. A Comparative Market Analysis (CMA).

The servicer shall provide specific instructions to the mortgagor concerning any requirements which must be met by the mortgagor prior to any such appraisal. The appraisal shall take place no later than sixty (60) days after receipt of the written request for cancellation. No later than thirty (30) days after an appraisal is completed, the servicer shall provide the mortgagor a copy of the results of the appraisal.

C. If the loan-to-value ratio, as established by the appraisal, is seventy-eight percent (78%) or less, the servicer shall notify the mortgagor in writing within ninety (90) days from the date of the appraisal that the private mortgage insurance has been cancelled and that no further premiums, payments, or other fees shall be due or payable by the mortgagor in connection with the private mortgage insurance. The servicer shall reimburse any unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased.

D. A cancellation of private mortgage insurance under this act shall not be required if the property has a second mortgage, or the property owner or owners do not have a good payment history. In order to have a good payment history, the property owner or owners must show that:

1. Payments are current;

2. No payments were more than thirty (30) days late in the past twelve (12) months;

3. No more than one late payment penalty was applied in the past twelve (12) months; and

4. There is no notice of default recorded against the property.

E. The Insurance Commissioner is hereby authorized to adopt such rules as may be necessary to carry out the provisions of this act.

F. The Insurance Commissioner, after notice and hearing, and upon a determination that a servicer has violated any of the provisions of this act, may assess a civil penalty of not more than Five Thousand Dollars ($5,000.00) for each occurrence. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced. Such penalty payments shall be deposited in the State Insurance Commissioner Revolving Fund.

SECTION 4. This act shall become effective November 1, 2006.

Passed the Senate the 2nd day of March, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of __________, 2006.

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Presiding Officer of the House of Representatives