ENGROSSED SENATE
BILL NO. 1689

By: Crain of the Senate

and

Sullivan of the House

[real estate - Oklahoma Real Estate Settlement Practices Act - Oklahoma Residential Mortgage Fraud Act – codification - effective date - emergency]

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 5201 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited to as the "Oklahoma Real Estate Settlement Practices Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5202 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that significant reforms in the real estate settlement process are needed and the gist of federal law should be adopted in Oklahoma law to allow the Insurance Commissioner to facilitate local enforcement of such laws.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5203 of Title 36, unless there is created a duplication in numbering, reads as follows:

For purposes of this act the following definitions shall apply:

1. "Federally related mortgage loan" means any loan other than temporary financing such as a construction loan which:

a. is secured by a first or subordinate lien on residential real property including individual units

of condominiums and cooperatives designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property, and

b. (1) is made in whole or in part by any lender, the deposits or accounts of which are insured by any agency of the federal government, or is made in whole or in part by any lender which is regulated by any agency of the federal government,

(2) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the federal government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency,

(3) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation, or

(4) is made in whole or in part by any "creditor", as defined in 15 U.S.C., Section 1602(f), who makes or invests in residential real estate loans aggregating more than One Million Dollars ($1,000,000.00) per year, except that for the purpose of this chapter, the term "creditor" does

not include any agency or instrumentality of any state;

2. "Thing of value" means any payment, advance, funds, loan, service, or other consideration;

3. "Settlement services" means any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans, and the handling of the processing, and closing or settlement;

4. "Title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

5. "Person" means individuals, corporations, associations, partnerships, and trusts;

6. "Secretary" means the Secretary of Housing and Urban Development;

7. "Affiliated business arrangement" means an arrangement in which:

a. a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than one percent (1.0%) in a provider of settlement services, and

b. either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider;

8. "Associate" means one who has one or more of the following relationships with a person in a position to refer settlement business:

a. a spouse, parent, or child of such person,

b. a corporation or business entity that controls, is controlled by, or is under common control with such person,

c. an employer, officer, director, partner, franchisor, or franchisee of such person, or

d. anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business; and

9. “Commissioner” means the Insurance Commissioner of the State of Oklahoma.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5204 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

B. Except as provided under paragraphs 1 and 2 of this subsection, the notice required under subsection A of this section

shall be made to the borrower not less than fifteen (15) days before the effective date of transfer of the servicing of the mortgage loan with respect to which such notice is made.

1. The notice required under subsection A of this section shall be made to the borrower not more than thirty (30) days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan with respect to which such notice is made in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by:

a. termination of the contract for servicing the loan for cause,

b. commencement of proceedings for bankruptcy of the servicer, or

c. 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.

2. The provisions of this subsection shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement with respect to the property for which the mortgage loan is made, written notice under paragraph 3 of this subsection of such transfer.

3. The notice required under subsection A of this section shall include the following information:

a. the effective date of transfer of the servicing described in such paragraph,

b. the name, address, and toll-free or collect call telephone number of the transferee servicer,

c. a toll-free or collect call telephone number for (1) an individual employed by the transferor servicer, or

(2) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing,

d. the name and toll-free or collect call telephone number for (1) an individual employed by the transferee servicer, or (2) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing,

e. the date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments,

f. any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage, and

g. a statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

C. Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

1. Except as provided in paragraphs 2 and 3 of this subsection, the notice required under this subsection shall be made to the borrower not more than fifteen (15) days after the effective date of

transfer of the servicing of the mortgage loan with respect to which such notice is made.

2. The notice required under this subsection shall be made to the borrower not more than thirty (30) days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan with respect to which such notice is made in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by:

a. termination of the contract for servicing the loan for cause,

b. commencement of proceedings for bankruptcy of the servicer, or

c. 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.

3. The provisions of paragraphs 1 and 2 of this subsection shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement with respect to the property for which the mortgage loan is made, written notice under paragraph 3 of subsection B of such transfer.

4. Any notice required under this subsection shall include the information described in paragraph 3 of subsection B of this section.

D. During the sixty-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan, and no such payment may be treated as late for any other purposes, if the payment is received by the transferor

servicer, rather than the transferee servicer who should properly receive payment, before the due date applicable to such payment.

E. 1. If any servicer of a federally related mortgage loan receives a qualified written request from the borrower or an agent of the borrower for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within twenty (20) days, excluding legal public holidays, Saturdays, and Sundays unless the action requested is taken within such period.

2. For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that:

a. includes, or otherwise enables the servicer to identify, the name and account of the borrower, and

b. includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

3. Not later than sixty (60) days, excluding legal public holidays, Saturdays, and Sundays, after the receipt from any borrower of any qualified written request under paragraph 1 of this subsection and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall:

a. make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower,

b. after conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(1) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer, and

(2) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower, or

c. after conducting an investigation, provide the borrower with a written explanation or clarification that includes:

(1) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and

(2) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

4. During the sixty-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer-reporting agency as defined under 15 U.S.C., Section 1681a.

F. Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

1. In the case of any action by an individual, an amount equal to the sum of:

a. any actual damages to the borrower as a result of the failure, and

b. any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed One Thousand Dollars ($1,000.00);

2. In the case of a class action, an amount equal to the sum of:

a. any actual damages to each of the borrowers in the class as a result of the failure, and

b. any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than One Thousand Dollars ($1,000.00) for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of:

(1) Five Hundred Thousand Dollars ($500,000.00), or

(2) One percent (1%) of the net worth of the servicer;

3. In addition to the amounts under paragraph 1 or 2 of this subsection, in the case of any successful action under this section, the costs of the action, together with any attorney fees incurred in connection with such action as the court may determine to be reasonable under the circumstances; and

4. A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within sixty (60) days after discovering an error whether pursuant to a final written examination report or the servicer's own procedures and before the commencement of an action

under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

G. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.

H. Notwithstanding any provision of state law or rule, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such state law or rule requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

I. For purposes of this section:

1. "Effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan;

2. "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

3. "Servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in Section 8 of this act, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

J. 1. A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection A of this section with respect to an application for a loan made by the borrower before the rules referred to in paragraph 3 of this subsection take effect.

2. A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform

any duty under subsections C, D or E of this section that arises before the rules referred to in paragraph 3 of this section take effect.

3. The Insurance Commissioner shall promulgate any rules necessary to implement the provisions of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5205 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. This act does not apply to credit transactions involving extensions of credit:

1. Primarily for business, commercial, or agricultural purposes; or

2. To government or governmental agencies or instrumentalities.

B. In prescribing rules under subsection A of Section 11 of this act, the Insurance Commissioner shall ensure that, with respect to subsection A of this section, the exemption for credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, as provided in paragraph 1 of subsection A of this section shall be the same as the exemption for such credit transactions under 15 U.S.C., Section 1603(1).

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5206 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

B. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a

transaction involving a federally related mortgage loan other than for services actually performed.

C. Nothing in this section shall be construed as prohibiting the following:

1. The payment of a fee to an attorney-at-law for services actually rendered or by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or by a lender to its duly appointed agent for services actually performed in the making of a loan;

2. The payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

3. Payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers;

4. Affiliated business arrangements so long as:

a. a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred:

(1) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business,

(2) in the case of a referral made by telephone within three (3) business days after the referral by telephone, and in such case an abbreviated verbal disclosure of the existence of the

arrangement and the fact that a written disclosure will be provided within three (3) business days shall be made to the person being referred during the telephone referral, or

(3) in the case of a referral by a lender, including a referral by a lender to an affiliated lender, at the time the estimates required under 12 U.S.C., Section 2604(c), are provided, notwithstanding divisions (1) and (2) of this subparagraph, and

(4) any required written receipt of such disclosure without regard to the manner of the disclosure under this paragraph may be obtained at the closing or settlement except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time; and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral,

b. such person is not required to use any particular provider of settlement services, and

c. the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship; or

5. Such other payments or classes of payments or other transfers as are specified in rules prescribed by the Insurance

Commissioner. For purposes of the preceding sentence, the following shall not be considered a violation of subparagraph b of paragraph 4 of this subsection:

a. any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit-reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or

b. any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to the law practice of the attorney or law firm.

D. 1. Any person or persons who violate the provisions of this section shall be fined not more than Ten Thousand Dollars ($10,000.00) or imprisoned for not more than one year, or both.

2. Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

3. No person or persons shall be liable for a violation of the provisions of subparagraph a of paragraph 4 of subsection C of this section if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error, notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

4. The Insurance Commissioner may bring an action to enjoin violations of this section.

5. In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorney fees.

6. No other provision of state law or rule that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5207 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

B. Any seller who violates the provisions of subsection A of this section shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5208 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower:

1. To deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of

its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

2. To deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property in excess of the sum of:

a. one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve (12) months, which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and

b. such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; provided, however, that in the event the lender determines there will be or is a deficiency, the lender shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

B. If the terms of any federally related mortgage loan require the borrower to make payments to the servicer, as defined in 12 U.S.C., Section 2605(i), of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the

servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

C. 1. a. Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first twelve (12) months after the establishment of the account and the anticipated dates of such payments.

b. The statement required under subparagraph a of paragraph 1 of this subsection shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration of the forty-five-day period beginning on the date of the establishment of the escrow account.

c. Any servicer may submit the statement required under subparagraph a of paragraph 1 of this subsection to the borrower at closing and may incorporate such statement in the uniform settlement statement required under 12 U.S.C., Section 2603.

2. a. Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph b of this paragraph during which the servicer services the escrow account, the amount of

the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other charges, as separately identified, and the balance in the escrow account at the conclusion of the period.

b. The statement required under subparagraph a of this paragraph shall be submitted to the borrower not less than once for each twelve-month period, the first such period beginning on January 1, 2006, and shall be submitted not more than thirty (30) days after the conclusion of each such one-year period.

D. 1. In the case of each failure to submit a statement to a borrower as required under subsection C of this section, the Insurance Commissioner shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of not to exceed One Thousand Dollars ($1,000.00) for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any twelve-month period referred to in subsection C of this section may not exceed One Hundred Thousand Dollars ($100,000.00).

2. If any failure to which paragraph 1 of this subsection applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure:

a. the penalty imposed under paragraph 1 shall be One Hundred Dollars ($100.00), and

b. in the case of any penalty determined under subparagraph a of this paragraph, the One Hundred Thousand Dollars ($100,000.00) limitation under paragraph 1 of this subsection shall not apply.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5209 of Title 36, unless there is created a duplication in numbering, reads as follows:

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it or a loan for the purchase of a mobile home, or by a servicer, as the term is defined under 12 U.S.C., Section 2605(i), for or on account of the preparation and submission by such lender or servicer of the statement or statements required in connection with such loan by 12 U.S.C., Section 2603, and subsection C of Section 8 of this act or by the Truth in Lending Act, 15 U.S.C., Section 1601 et seq.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5210 of Title 36, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5211 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner is authorized to promulgate such rules as are necessary to implement the provisions of this act and to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this act. Any such rules promulgated shall be consistent with the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C., Section 2601 et seq., federal rules on RESPA and rulings of the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court on RESPA.

B. No provision of this act or the laws of this state imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or interpretation thereof by the Commissioner or the Attorney General, notwithstanding that after such act or omission has occurred, such rule or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

C. 1. The Commissioner may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this act, in prescribing of rules thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Commissioner is authorized to hold such hearings, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and production of such documents as the Commissioner deems advisable.

2. Any district court of the State of Oklahoma within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena of the Commissioner issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5212 of Title 36, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a Revolving Fund for the Insurance Commission. The revolving fund shall consist of civil penalties pursuant to this act for operational expenses to enforce the provisions of this act as approved by the Insurance Commissioner. Expenditures from such revolving fund shall be made pursuant to the laws of this state and statutes relating to the office of the Insurance Commissioner. This revolving fund shall be

a continuing fund, not subject to fiscal year limitations, and shall be under the control and management of the office of the Insurance Commissioner.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 46, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Residential Mortgage Fraud Act".

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 46, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, certificates of inspection and inspectors reports and notes, HUD-1 settlement statements; supporting personal documentation for loan applications, such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs and any required disclosures;

2. "Pattern of residential mortgage fraud" means one or more misstatement, misrepresentation or omission made during the mortgage lending process that involve two or more residential properties, which have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics;

3. “Person” means a natural person, corporation, company, limited liability company, partnership, trustee, association or any other entity; and

4. “Residential mortgage loan” means a loan or agreement to extend credit made to a person, which loan is secured by a deed to secure debt, security deed, mortgage, security interest, deed of trust or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Oklahoma, including the renewal or refinancing of any such loan.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 46, unless there is created a duplication in numbering, reads as follows:

A person commits the offense of residential mortgage fraud when, with the intent to defraud, such person:

1. Knowingly makes any deliberate misstatement, misrepresentation or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;

2. Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation or omission, knowing the same to contain a misstatement, misrepresentation or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower or any other party to the mortgage lending process;

3. Receives any proceeds or any other funds in connection with a residential mortgage closing that such person knew resulted from a violation of paragraph 1 or 2 of this section;

4. Conspires to violate any of the provisions of paragraph 1, 2 or 3 of this section; or

5. Files or causes to be filed with the official registrar of deeds of any county of this state any document such person knows to contain a deliberate misstatement, misrepresentation or omission.

An offense of residential mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations and interpretations related to the mortgage lending process.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 46, unless there is created a duplication in numbering, reads as follows:

A. District attorneys and the Attorney General shall have the authority to conduct the criminal investigation and prosecution of all cases of residential mortgage fraud under this act.

B. In any investigation conducted pursuant to this section, a district attorney or the Attorney General may issue subpoenas or other process to any person believed to have information relevant to the investigation, administer oaths, take sworn statements under penalty of perjury and serve and execute search warrants. A subpoena issued by a district attorney or the Attorney General shall not be used for the purpose of compelling the recipient to furnish self incriminating evidence.

C. For the purpose of venue under this article, any violation of this article shall be considered to have been committed:

1. In the county in which the residential property for which a mortgage loan is being sought is located;

2. In any county in which any act was performed in furtherance of the violation;

3. In any county in which any person alleged to have violated this article had control or possession of any proceeds of the violation;

4. If a closing occurred, in any county in which the closing occurred; or

5. In any county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with the official registrar of deeds.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 46, unless there is created a duplication in numbering, reads as follows:

A. Any person violating this article shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten (10) years, by a fine not to exceed Five Thousand Dollars ($5,000.00), or both.

B. If a violation of this article involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, such violation shall be punishable by imprisonment for not less than three (3) years nor more than twenty (20) years, by a fine not to exceed One Hundred Thousand Dollars ($100,000.00), or both.

C. Each residential property transaction subject to a violation of this article shall constitute a separate offense and shall not merge with any other crimes set forth in this title.

D. All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this article shall be subject to forfeiture to the state.

E. The Attorney General or district attorney may institute civil proceedings in an appropriate district court on behalf of this state against any person committing a violation of this act. If a violation of this act is proven by a preponderance of the evidence in a civil proceeding, the district court may grant the following relief by entering an appropriate order of judgment:

1. Restitution for any persons aggrieved by the violation;

2. Payment of a civil penalty not to exceed One Hundred Thousand Dollars ($100,000.00) per violation;

3. The suspension or revocation of a license, permit or prior approval granted to any person by an agency of the state;

4. Any appropriate injunctive relief; and

5. Attorney fees and investigative costs.

Civil penalties sued for and recovered by the Attorney General or a district attorney shall be used for the furtherance of their duties.

SECTION 18. AMENDATORY 22 O.S. 2001, Section 1402, is amended to read as follows:

Section 1402. As used in the Oklahoma Corrupt Organizations Prevention Act:

1. "Beneficial interest" includes:

a. the interest of a person as a beneficiary pursuant to a trust, in which the trustee holds legal title to personal or real property, or

b. the interest of a person as a beneficiary pursuant to any other arrangement under which any other person holds legal title to personal or real property for the benefit of such person.

The term beneficial interest does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership;

2. "Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking;

3. "Innocent party" includes bona fide purchasers and victims;

4. "Lien notice" means the notice pursuant to the provisions of Section 1412 of this title;

5. "Pattern of racketeering activity" means two or more occasions of conduct:

a. that include each of the following:

(1) constitute racketeering activity,

(2) are related to the affairs of the enterprise,

(3) are not isolated, and

(4) are not so closely related to each other and connected in point of time and place that they constitute a single event, and

b. where each of the following is present:

(1) at least one of the occasions of conduct occurred after November 1, 1988,

(2) the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and

(3) for the purposes of Section 1403 of this title each of the occasions of conduct constituted a felony pursuant to the laws of this state;

6. "Pecuniary value" means:

a. anything of value in the form of money, a negotiable instrument, or a commercial interest, or anything else, the primary significance of which is economic advantage, or

b. any other property or service that has a value in excess of One Hundred Dollars ($100.00);

7. "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property;

8. "Personal property" includes any personal property, or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. Personal property and beneficial interest in personal property shall be deemed to be located where the trustee, the personal property, or the instrument evidencing the right is located;

9. "Principal" means a person who engages in conduct constituting a violation of the Oklahoma Corrupt Organizations Prevention Act or who is legally accountable for the conduct of

another who engages in a violation of the Oklahoma Corrupt Organizations Prevention Act;

10. "Racketeering activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of one or more of the following provisions of the Oklahoma Statutes, regardless of whether such act is in fact charged or indicted:

a. relating to homicide pursuant to the provisions of Sections 651, 652, 653, 701.7, 701.8, 701.16, 711 or 716 of Title 21 of the Oklahoma Statutes or relating to concealment of homicidal death pursuant to the provisions of Section 543 of Title 21 of the Oklahoma Statutes,

b. relating to kidnapping pursuant to the provisions of Sections 741, 745, 891 or 1119 of Title 21 of the Oklahoma Statutes,

c. relating to sex offenses pursuant to the provisions of Sections 886, 888, 1021, 1021.2, 1021.4, 1024.2, ~~1040.51,~~ 1111, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes,

d. relating to bodily harm pursuant to the provisions of Sections 645, 650, 650.2, 1289.16, 1302, 1303 or 1767.1 of Title 21 of the Oklahoma Statutes,

e. relating to theft, where the offense constitutes a felony, pursuant to the provisions of Sections 1704, 1707, 1708, 1709, 1710, 1711, 1713, 1716, 1719, 1720, 1721, 1722, 1723 or 1731 of Title 21 of the Oklahoma Statutes,

f. relating to forgery pursuant to the provisions of Sections 1561, 1562, 1571, 1572, 1574, 1575, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586,

1587, 1588, 1589, 1590, 1591 or 1593 of Title 21 of the Oklahoma Statutes,

g. relating to robbery pursuant to the provisions of Sections 797, 800 or 801 of Title 21 of the Oklahoma Statutes,

h. relating to burglary pursuant to the provisions of Sections 1431, 1435 or 1437 of Title 21 of the Oklahoma Statutes,

i. relating to arson pursuant to the provisions of Sections 1368, 1401, 1402, 1403 or 1404 of Title 21 of the Oklahoma Statutes,

j. relating to use or possession of a firearm or other offensive weapon while committing or attempting to commit a felony pursuant to the provisions of Sections 1287, 1289.20 or 1289.21 of Title 21 of the Oklahoma Statutes,

k. relating to gambling pursuant to the provisions of Sections 941, 942, 944, 945, 946, 948, 954, 956, 957, 962, 969, 970, 971, 981, 982, 983, 984, 985, 986, 987, 991~~,~~ or 992, ~~995.7, 995.8, 995.11 or 995.12~~ of Title 21 of the Oklahoma Statutes,

l. relating to bribery in contests pursuant to the provisions of Sections 399 or 400 of Title 21 of the Oklahoma Statutes,

m. relating to interference with public officers pursuant to the provisions of Sections 434, 436, 437, 438, 439, 440, 441, 443, 444, 521, 522, 532, 540, 543, 545 or 546 of Title 21 of the Oklahoma Statutes,

n. relating to interference with judicial procedure pursuant to the provisions of Sections 388, 453, 455, 456, 491, 496 or 504 of Title 21 of the Oklahoma Statutes,

o. relating to official misconduct pursuant to the provisions of Sections 380, 381, 382, 383, 384, 385, 386, 389, 390, 950 or 976 of Title 21 of the Oklahoma Statutes,

p. relating to the Uniform Controlled Dangerous Substances Act, where the offense constitutes a felony, pursuant to the provisions of Section 2-101 et seq. of Title 63 of the Oklahoma Statutes,

q. relating to automobile theft pursuant to the provisions of Sections 4-102, 4-103, 4-107, 4-108, 4-109 or 4-110 of Title 47 of the Oklahoma Statutes,

r. relating to embezzlement pursuant to the provisions of Section 1412 of Title 6 of the Oklahoma Statutes, Section 641 of Title 19 of the Oklahoma Statutes, Sections 341, 531~~,~~ or 1451, ~~1452, 1453, 1454, 1455, 1456, 1463 or 1464~~ of Title 21 of the Oklahoma Statutes, Section 163.4 of Title 37 of the Oklahoma Statutes, ~~Section 25 of Title 41 of the Oklahoma Statutes,~~ Section 114 of Title 64 of the Oklahoma Statutes or ~~Sections 506 or~~ Section 1361 of Title 68 of the Oklahoma Statutes,

s. relating to extortion, where the offense constitutes a felony, pursuant to the provisions of Sections 1304, 1481, 1482, 1485, 1486 or 1488 of Title 21 of the Oklahoma Statutes,

t. relating to fraud, where the offense constitutes a felony, pursuant to the provisions of Sections 208.6, 208.7 or 208.8 of Title 3A of the Oklahoma Statutes, Section 552.18 of Title 18 of the Oklahoma Statutes, Sections 358, 1411, 1412, 1413, 1414, 1415, 1416, 1503, 1521, 1541.1, 1541.3, 1542, 1543, 1544, 1550.2, 1550.22, 1550.23, 1550.24, 1550.25, 1550.26, 1550.27,

1550.28, 1550.29, 1550.30, 1550.31, 1550.32, 1632, 1635 or 1662 of Title 21 of the Oklahoma Statutes, Sections 101, 102, 103, 104, and 105 of Title 46 of the Oklahoma Statutes, Section 243 of Title 56 of the Oklahoma Statutes, or Section 604 of Title 62 of the Oklahoma Statutes,

u. relating to conspiracy, where the offense constitutes a felony, pursuant to the provisions of Sections 421, 422 or 424 of Title 21 of the Oklahoma Statutes,

v. relating to prostitution, pornography or obscenity pursuant to the provisions of Sections 1021, 1040.52, 1081, 1085, 1086, 1087 or 1088 of Title 21 of the Oklahoma Statutes,

w. relating to the Oklahoma Alcoholic Beverage Control Act, where the offense constitutes a felony, pursuant to the provisions of Section 506.1 et seq. of Title 37 of the Oklahoma Statutes,

x. relating to the Oklahoma Securities Act, where the offense constitutes a felony, pursuant to the provisions of Section 1 et seq. of Title 71 of the Oklahoma Statutes, or

y. relating to trafficking in children pursuant to the provisions of Sections 866 and 867 of Title 21 of the Oklahoma Statutes;

In addition, "racketeering activity" may be proven by proof of engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the above described conduct within another state, regardless of whether said conduct is chargeable or indictable in that state.

11. "Real property" means any real property or any interest in real property, including any lease of, or mortgage upon real

property. Real property and beneficial interest in real property shall be deemed to be located where the real property is located;

12. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee in accordance with the Oklahoma Trust Act, Section 175.1 et seq. of Title 60 of the Oklahoma Statutes; and

13. "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is unenforceable in the courts of Oklahoma, because the debt was incurred or contracted in violation of a law relating to the business of gambling activity or in violation of federal or state law but does not include any debt owed to a bank, savings and loan association, credit union or supervised lender licensed by the Oklahoma Administrator of Consumer Credit or to any debt referred or assigned to a debt collection agency, which referral or assignment is accepted in good faith by the debt collection agency as a debt collectible under the Uniform Commercial Code or other laws of this state and enforceable in the courts of this state.

SECTION 19. This act shall become effective July 1, 2006.

SECTION 20. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 7th day of March, 2006.

_____
Presiding Officer of the Senate

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

_____
Presiding Officer of the House
of Representatives