

SB 1385

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THE STATE SENATE
Tuesday, February 28, 2006

Senate Bill No. 1385
As Amended

SENATE BILL NO. 1385 - By: JOHNSON (Mike) of the Senate and YOUNG of the House.

[insurance - creating Oklahoma Homeowner's Private Mortgage Insurance Protection Act - codification - 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;

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

3 4. "Private mortgage insurance" means mortgage insurance that
4 insures lenders against financial loss by reason of nonpayment of
5 principal, interest and other sums agreed to be paid under the terms
6 of any note, bond or other evidence of indebtedness secured by a
7 mortgage, deed of trust or other instrument constituting a lien or
8 charge on real estate which contains a residential building.

9 However, private mortgage insurance does not include mortgage
10 insurance made available under the National Housing Act, 12 U.S.C.,
11 Section 1701 et seq., Title 38, or Title V of the Housing Act of
12 1949, 42 U.S.C., Section 1471 et seq.;

13 5. "Servicer" means the person responsible for
14 servicing of a loan including the person who makes or holds a
15 loan if such person also services the loan. The term does not
16 include:

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

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

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

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

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

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

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

4 A. In addition to the cancellation and termination provisions
5 for private mortgage insurance on a residential mortgage
6 transaction, as provided in the Homeowner's Protection Act of 1998,
7 12 U.S.C., Section 4901 et seq., on loans originated on or after the
8 effective date of this act, a servicer shall cancel private mortgage
9 insurance on any residential mortgage transaction if the mortgagor
10 makes a written request to the servicer for such a cancellation, and
11 the loan-to-value ratio of the property is seventy-eight percent
12 (78%) or less due to either:

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

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

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

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

1 2. A Broker's Price Opinion (BPO); or

2 3. A Comparative Market Analysis (CMA).

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

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

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

1 1. Payments are current;
2 2. No payments were more than thirty (30) days late in the past
3 twelve (12) months;
4 3. No more than one late payment penalty was applied in the
5 past twelve (12) months; and

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

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,
19 As Amended and Coauthored.