

SB 1913

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Senate Bill No. 1913  
As Amended

SENATE BILL NO. 1913 - By: Newberry of the Senate and Peters of the House.

[ professions and occupations - exemptions under the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act - mortgage loan originators - trust accounts - continuing education for mortgage loan originators and brokers - effective date - emergency ]

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

SECTION 1. AMENDATORY Section 6, Chapter 190, O.S.L. 2009 (59 O.S. Supp. 2009, Section 2095.3), is amended to read as follows:

Section 2095.3 The following are exempt from all provisions of the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act:

- 1. Registered mortgage loan originators, when acting for an entity described in divisions (1), (2) and (3) of subparagraph a of paragraph 17 of Section ~~5~~ 2095.2 of this ~~act~~ title;
- 2. An individual who offers or negotiates or modifies terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

1           3. An individual who offers or negotiates or modifies terms of  
2 a residential mortgage loan secured by a dwelling that served as the  
3 individual's residence; ~~or~~

4           4. A licensed attorney who negotiates or modifies the terms of  
5 a residential mortgage loan on behalf of a client as an ancillary  
6 matter to the attorney's representation of the client, unless the  
7 attorney is compensated by a lender, a mortgage broker or other  
8 mortgage loan originator or by any agent of such lender, mortgage  
9 broker, or other mortgage loan originator; or

10           5. Entities described in divisions (1), (2), and (3) of  
11 subparagraph 17 of Section 2095.2 of this title.

12           SECTION 2.           AMENDATORY           Section 10, Chapter 190, O.S.L.  
13 2009 (59 O.S. Supp. 2009, Section 2095.7), is amended to read as  
14 follows:

15           Section 2095.7 The Administrator of Consumer Credit shall not  
16 issue a mortgage loan originator license unless the Administrator  
17 makes at a minimum the following findings:

18           1. The applicant has never had a mortgage loan originator  
19 license revoked in any governmental jurisdiction, except that a  
20 subsequent formal vacation of such revocation shall not be deemed a  
21 revocation;

1           2. The applicant has not been convicted of, or pled guilty or  
2 nolo contendere to a felony in a domestic, foreign or military  
3 court:

4           a. during the seven-year period preceding the date of the  
5 application for licensing and registration, or

6           b. at any time preceding such date of application, if  
7 such felony involved an act of fraud, dishonesty, a  
8 breach of trust or money laundering.

9           Provided, that any pardon of a conviction shall not be a  
10 conviction for purposes of this paragraph;

11          3. The applicant has demonstrated financial responsibility,  
12 character and general fitness such as to command the confidence of  
13 the community and to warrant a determination that the mortgage loan  
14 originator will operate honestly, fairly and efficiently within the  
15 purposes of this act. For purposes of this paragraph, an individual  
16 has shown that he or she is not financially responsible when he or  
17 she has shown a disregard in the management of his or her own  
18 financial condition. A determination that an individual has not  
19 shown financial responsibility may include, but not be limited to:

20           a. current outstanding judgments, except judgments solely  
21 as a result of medical expenses,

22           b. current outstanding tax liens or other government  
23 liens and filings,

1 c. foreclosures within the past three (3) years, or  
2 d. pattern of seriously delinquent accounts within the  
3 past three (3) years;

4 4. The applicant has completed the prelicensing education  
5 requirement described in Section ~~11~~ 2095.8 of this ~~act~~ title;

6 5. The applicant has passed a written test that meets the test  
7 requirement described in Section ~~12~~ 2095.9 of this ~~act~~ title; and

8 6. The applicant has paid into the Oklahoma Mortgage Broker and  
9 Mortgage Loan Originator Recovery Fund as required by paragraph 6 of  
10 subsection M of Section ~~9~~ 2095.6 of this ~~act~~ title; and

11 7. The applicant is sponsored by a licensed mortgage **broker**.

12 **SECTION 3. AMENDATORY Section 18, Chapter 190, O.S.L.**  
13 **2009 (59 O.S. Supp. 2009, Section 2095.15), is amended to read as**  
14 **follows:**

15 Section 2095.15 A. A mortgage broker or mortgage loan  
16 originator shall have a written correspondent or loan brokerage  
17 agreement with a lender before any solicitation of, or contracting  
18 with, the public.

19 B. Upon receipt of a loan application and before the receipt of  
20 any monies from a borrower, a mortgage broker or mortgage loan  
21 originator shall provide to a borrower the disclosures required by  
22 the Real Estate Settlement Procedures Act, 12 U.S.C., Section 2601  
23 et seq. (RESPA) and Regulation X, 24 C.F.R., Section 3500.1 et seq.,

1 as promulgated by HUD. Compliance with the disclosure requirements  
2 mandated by RESPA and HUD's Regulation X constitutes compliance with  
3 this act. Notwithstanding this subsection, a mortgage broker or  
4 mortgage loan originator shall disclose any fee or compensation  
5 received from the lender in the loan application. The fee shall be  
6 labeled "Yield Spread Premium" and shall include the following  
7 definition: "A yield spread premium is a form of compensation that a  
8 mortgage broker or mortgage loan originator receives from the lender  
9 for selling an interest rate to a borrower that is above the  
10 lender's par rate for which the borrower qualifies."

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

20 D. 1. Except as otherwise permitted by this subsection, no  
21 mortgage broker or mortgage loan originator shall receive a fee,  
22 commission, or compensation of any kind in connection with the  
23 preparation, negotiation, and brokering or modification of a

1 residential mortgage loan unless a borrower actually obtains a loan  
2 or has a loan modified from or by a lender on the terms and  
3 conditions agreed upon by the borrower and mortgage broker or  
4 mortgage loan originator.

5 2. If a mortgage broker, banker or mortgage loan originator has  
6 assisted a borrower in obtaining a residential mortgage loan and the  
7 borrower decides to refinance or sell the property in question, the  
8 lender shall be prohibited from charging back any fee income paid by  
9 the lender to the mortgage broker, banker or loan originator unless  
10 the mortgage broker, banker or loan originator is involved in such  
11 refinance.

12 3. A mortgage broker or mortgage loan originator may solicit or  
13 receive fees for third-party provider goods or services in advance  
14 and may solicit and receive a reasonable administrative fee to  
15 recoup administrative costs, provided such a fee shall be disclosed  
16 in advance and shall be consistent across all borrowers. The  
17 mortgage broker or mortgage loan originator may not charge more for  
18 the goods and services than the actual costs of the goods or  
19 services charged by the third-party provider.

20 E. The Commission on Consumer Credit, in accordance with the  
21 Administrative Procedures Act shall have the authority to adopt  
22 rules not inconsistent with disclosures mandated by RESPA and HUD's  
23 Regulation X and which are within, but not beyond, the statutory

1 scope and other provisions of this act to facilitate compliance with  
2 the disclosure and other requirements of this act.

3 F. The provisions of subsections B and C of this section shall  
4 not apply to a depository institution as defined in Section 5 2095.2  
5 of this ~~act~~ title, its subsidiaries and affiliates or any employee  
6 or exclusive agent thereof.

7 SECTION 4. AMENDATORY Section 19, Chapter 190, O.S.L.  
8 2009 (59 O.S. Supp. 2009, Section 2095.16), is amended to read as  
9 follows:

10 Section 2095.16 A. A mortgage broker or mortgage loan  
11 originator shall deposit, prior to the end of the next business day,  
12 all monies received from borrowers for third-party provider services  
13 in a trust account of a federally insured financial institution  
14 **located in this state.** The trust account shall be designated and  
15 maintained for the benefit of borrowers. Monies maintained in the  
16 trust account shall be exempt from execution, attachment, or  
17 garnishment. A mortgage broker or mortgage loan originator shall  
18 not in any way encumber the corpus of the trust account or commingle  
19 any other operating funds with trust account funds.

20 B. Withdrawals from the trust account shall be only for the  
21 payment of bona fide services rendered by a third-party provider or  
22 for refunds to borrowers. Any interest earned on the trust account  
23 shall be refunded or credited to the borrowers at closing. Any

1 monies remaining in the trust account after payment to third-party  
2 providers shall be refunded to the borrower.

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

6 D. A mortgage broker or mortgage loan originator shall maintain  
7 accurate, current, and readily available records of the trust  
8 account until at least three (3) years have elapsed following the  
9 effective period to which the records relate. The records shall be  
10 subject to audit by the Administrator of Consumer Credit pursuant to  
11 an examination or investigation.

12 E. The provisions of this section shall not apply to a  
13 depository institution as defined in Section ~~5~~ 2095.2 of this ~~act~~  
14 title, its subsidiaries and affiliates or any employee or exclusive  
15 agent thereof.

16 SECTION 5. REPEALER Section 9, Chapter 469, O.S.L.  
17 2002, as last amended by Section 13, Chapter 2, O.S.L. 2009 (59 O.S.  
18 Supp. 2009, Section 2093), is hereby repealed.

19 SECTION 6. This act shall become effective July 1, 2010.

20 SECTION 7. It being immediately necessary for the preservation  
21 of the public peace, health and safety, an emergency is hereby  
22 declared to exist, by reason whereof this act shall take effect and  
23 be in full force from and after its passage and approval.

1 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-9-10 - DO PASS,  
2 As Amended and Coauthored.