

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 1884

By: Armes and Russ of the House

and

Johnson (Rob) of the Senate

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6
7 [insurance - requiring certain individuals to comply
8 with regulation of transactions involving certain
9 security and real estate - licensing as settlement
10 agent or agency - licensing requirements -
11 independent, annual audit of certain accounts -
12 deposit of certain funds into escrow account -
13 suspension, revocation, or refusal to issue or renew
14 certain licenses - written notification of denial or
15 nonrenewal of license - judicial authorization for
16 public inspection of certain materials - continuing
17 education programs - effective date]

18 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
19 and entire bill and insert

20 "[insurance - requiring certain individuals to
21 comply with regulation of transactions involving
22 certain security and real estate - licensing as
23 settlement agent or agency - licensing requirements -
24 independent, annual audit of certain accounts -
deposit of certain funds into escrow account -
suspension, revocation, or refusal to issue or renew
certain licenses - written notification of denial or
nonrenewal of license - judicial authorization for
public inspection of certain materials - continuing
education programs - effective date]

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 5021 of Title 36, unless there
4 is created a duplication in numbering, reads as follows:

5 In order to provide consumer protection safeguards relating to
6 licensing, financial responsibility, and the handling of settlement
7 funds, existing settlement agents and settlement agencies, as well
8 as an individual applying for a license as a settlement agent or a
9 person who intends to employ a settlement agent in this state shall
10 comply with the regulation of escrow, closing, or settlement
11 services transactions involving the purchase of, or lending on,
12 security or real estate located in this state as provided in
13 Sections 1 through 7 of this act.

14 As used in this act:

15 1. "Commissioner" means the Insurance Commissioner of the State
16 of Oklahoma;

17 2. "Escrow" means written instruments, money, or other items
18 deposited by a party with a settlement agency for delivery to other
19 persons upon the performance of specified conditions or the
20 happening of a certain event;

21 3. "Escrow account" means an account maintained at a financial
22 institution for holding and disbursing funds to be paid to, and on
23 behalf of, parties to the transaction and which is subject to an
24 annual audit;

1 4. "Escrow, closing, or settlement services" means the
2 administrative and clerical services required to carry out the terms
3 of contracts affecting real estate including, but not limited to,
4 the sale, exchange, or mortgaging of real estate. These services
5 include, but are not limited to, placing orders for title insurance,
6 placing orders for abstracts, receiving money and issuing receipts
7 for money received from any party to the transaction, ordering loan
8 checks and payoffs, ordering surveys and inspections, preparing
9 settlement statements, determining that all closing documents
10 conform to the contract requirements of the parties, setting the
11 closing appointment, following up with the parties to ensure that
12 the transaction progresses to closing, ascertaining that the
13 instructions of the lender have been satisfied, conducting a closing
14 conference at which the documents are executed, receiving and
15 disbursing funds, completing form documents, and sending the
16 recorded documents and the title policies to the appropriate
17 parties;

18 5. "Financial institution" means a bank, savings bank, or
19 savings and loan association insured by the Federal Deposit
20 Insurance Corporation;

21 6. "Good funds" means:

- 22 a. cash or wire transfers,
- 23 b. certified checks, cashier's checks, and teller's
24 checks, which have been drawn on a financial

1 institution and for which a transaction code has been
2 issued pursuant to, and in compliance with, a fully
3 executed, immediately available funds procedure
4 agreement with the financial institution,

5 c. uncertified funds in the amount of not more than One
6 Thousand Five Hundred Dollars (\$1,500.00) including,
7 but not limited to, checks, traveler's checks, money
8 orders, and negotiable orders of withdrawal; provided,
9 multiple items shall not be used to avoid the one-
10 thousand-five-hundred-dollar limitation,

11 d. uncertified funds in excess of One Thousand Five
12 Hundred Dollars (\$1,500.00), when collected by the
13 financial institution,

14 e. United States Treasury checks,

15 f. State of Oklahoma warrants,

16 g. checks issued by an Oklahoma municipality or county,
17 and

18 h. a check from a settlement agent;

19 7. "Party to the real estate transaction" means:

20 a. with respect to a real estate transaction, a lender,
21 seller, purchaser, or borrower, and

22 b. with respect to a corporate purchaser, any entity
23 which is a subsidiary of, or under common ownership
24 with, that corporate purchaser;

1 8. "Person" means an individual, company, insurer, limited
2 liability company, association, organization, society, reciprocal or
3 inter-insurance exchange, partnership, syndicate, business trust,
4 corporation, or other legal entity, Lloyd's association, and entity
5 and association, group or department of underwriters;

6 9. "Received and deposited" means that good funds are in the
7 possession of an employee or representative of the settlement agency
8 and a record of receipt has been entered on the books of the
9 settlement agency, but only if the funds are actually delivered for
10 deposit to an escrow account at the financial institution in a
11 timely manner, which shall not exceed three (3) business days as
12 defined in Federal Reserve Board Regulations at CC, 12 CFE, Part
13 229, after the funds are received. If a settlement agent agrees to
14 postponement of deposit for a period of time longer than three (3)
15 business days after the date the funds are received, then the funds
16 shall be deposited not later than the date set out in the written
17 instructions. In case of a wire transfer or other direct deposit,
18 good funds shall be considered to be received and deposited when the
19 financial institution notifies the settlement agent that the funds
20 have been received;

21 10. "Settlement agent" means an individual who has been
22 licensed by the Commissioner pursuant to the provisions of this act,
23 other than a party to the real estate transaction, who provides
24

1 escrow, closing, or settlement services in connection with a
2 transaction related to real estate in this state;

3 11. "Settlement agency" means a person other than an individual
4 which employs settlement agents to provide escrow, closing, or
5 settlement services in connection with a transaction related to real
6 estate in this state;

7 12. "Settlement clerk" means an individual who has not been
8 licensed by the Commissioner pursuant to the provisions of this act,
9 but is employed by a licensed title agent or agency and is
10 supervised directly by a licensed agent and offices at the same
11 address of the licensed agent and assists in the duties of a closing
12 and clerical duties of real estate settlement;

13 13. "Settlement statement" means the statement of receipts and
14 disbursements for a transaction related to real estate including,
15 but not limited to, a statement prescribed pursuant to the federal
16 Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C.,
17 Sections 2601 through 2617; and

18 14. "Transaction" means the purchase and sale, mortgage,
19 exchange, or other act for which a settlement agency receives trust
20 funds or documents or both.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5022 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. Except as otherwise provided in this subsection, no
2 individual shall hold himself or herself out to be, or act in the
3 capacity of a settlement agent unless licensed by the Insurance
4 Commissioner. A lender, seller, purchaser, or borrower shall not
5 contract with any person to act in the capacity of a settlement
6 agent with respect to a real estate settlement unless that person is
7 licensed as a settlement agent or is an attorney licensed to
8 practice in this state acting in that capacity. A settlement agent
9 operating in compliance with the requirements of this act or a party
10 to the real estate transaction may provide escrow, closing, or
11 settlement services and receive compensation for these services.

12 B. No person shall hold himself or herself out to be, or act in
13 the capacity of a settlement agency unless licensed by the
14 Commissioner. A lender, seller, purchaser, or borrower shall not
15 contract with any person to act in the capacity of a settlement
16 agency with respect to a real estate settlement unless that person
17 is licensed as a settlement agency. A settlement agency operating
18 in compliance with the requirements of this act or a party to the
19 real estate transaction may provide escrow, closing, or settlement
20 services and receive compensation for these services. An individual
21 that is a party to the real estate transaction may provide escrow,
22 closing, or settlement services and receive compensation for these
23 services but not for the purposes of offering those services to the
24 public.

1 C. Upon reasonable notice to a settlement agent or settlement
2 agency, the Commissioner, or designee of the Commissioner, shall
3 have access to files of the settlement agent or settlement agency
4 for inspection and copying during any investigation of a settlement
5 agent or settlement agency.

6 D. Federal- and state-chartered banks and employees of federal-
7 and state-chartered banks shall not be subject to the licensing
8 requirements of this section; provided that the bank or employee is
9 currently providing escrow, closing, or settlement services to bank
10 customers.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 5023 of Title 36, unless there
13 is created a duplication in numbering, reads as follows:

14 A. An individual who is eighteen (18) years of age or older may
15 apply to obtain a license as a settlement agent by submitting an
16 application on a form prescribed by the Insurance Commissioner
17 accompanied by a nonrefundable application fee of Thirty-five
18 Dollars (\$35.00). Upon approval by the Commissioner of the
19 application and payment of license fee of One Hundred Dollars
20 (\$100.00), the Commissioner shall issue a license authorizing the
21 individual to act as a settlement agent. In addition to the
22 requirements of this subsection, the settlement agent license:

23 1. Shall be valid for a period of two (2) years; and
24

1 2. May be renewed annually upon application and approval by the
2 Commissioner and upon payment of a renewal fee of Sixty Dollars
3 (\$60.00).

4 B. A person seeking to obtain a license as a settlement agency
5 shall submit an application on a form prescribed by the Commissioner
6 accompanied by a nonrefundable application fee of Thirty-five
7 Dollars (\$35.00). In addition to the requirement of this
8 subsection:

9 1. Upon a determination by the Commissioner that the following
10 requirements have been satisfied by the applicant and payment of a
11 license fee of One Hundred Dollars (\$100.00), the Commissioner shall
12 issue a settlement agency license authorizing the person to act as a
13 settlement agency if:

14 a. the applicant has obtained errors and omissions
15 insurance from a company licensed to do business in
16 this state in the amount of Two Hundred Fifty Thousand
17 Dollars (\$250,000.00) per claim with an aggregate
18 limit of Five Hundred Thousand Dollars (\$500,000.00)
19 and with a deductible of not greater than Twenty-five
20 Thousand Dollars (\$25,000.00); provided, in the event
21 errors and omissions insurance is unavailable
22 generally, the Commissioner shall promulgate rules for
23 alternative methods to comply with the provisions of
24 this subparagraph,

1 b. the applicant has obtained a blanket fidelity bond
2 covering all settlement agents employed by the
3 settlement agency in an amount of not less than One
4 Hundred Thousand Dollars (\$100,000.00) and with a
5 deductible not to exceed fifteen percent (15%) of the
6 bond penalty. The bond shall provide coverage to the
7 buyer, seller, lender and title insurance underwriter
8 insuring against loss due to employee dishonesty,
9 defalcation, or embezzlement. In addition to the
10 requirements of this subparagraph, the following shall
11 be met:

12 (1) the bond shall be executed by an insurance
13 company authorized to do business in this state,

14 (2) the required bond premium shall be paid by the
15 settlement agency,

16 (3) the bond term shall be for the same or greater
17 period of time as the term of the settlement
18 agency license, and documentation of coverage
19 shall be provided with the application for
20 license renewal, and

21 (4) a bonding company cancelling a bond shall give
22 written notice of the cancellation to the
23 Insurance Department. The cancellation shall not
24 become effective until thirty (30) days after

1 receipt of the written notice by the Insurance
2 Department;

3 2. Title insurance underwriters and their wholly-owned
4 subsidiaries shall be exempt from the requirement of obtaining
5 errors and omissions insurance or a blanket fidelity bond;

6 3. The settlement agency license shall be valid for a period of
7 two (2) years; and

8 4. A settlement agency license may be renewed biannually upon
9 application and approval by the Commissioner and upon payment of a
10 renewal fee of Sixty Dollars (\$60.00).

11 C. Failure to comply with the errors and omissions and bonding
12 requirement shall constitute grounds for forfeiture of the
13 settlement agency license. The Commission shall determine a
14 reasonable grace period for the agency to replace the canceled bond.

15 D. At least once each twelve-month period every settlement
16 agency shall cause an accounting of their escrow accounts on a
17 regular schedule to be conducted internally by an authorized person
18 and with dual control of more than one employee or by an independent
19 certified public accountant.

20 In lieu of the annual audit, a settlement agency that is
21 licensed as a title insurance agent may allow, with approval from
22 the title agency, each title insurance company for which it has an
23 appointment to conduct an analysis of its escrow accounts in
24 accordance with regulations promulgated by the Insurance Department

1 of this state, as appropriate, at least once each consecutive
2 twelve-month period. With consent of the title insurance agent or
3 agency, a title insurance company may share the results of its
4 analysis with other title insurance companies that will accept the
5 same in lieu of conducting separate analyses.

6 E. The settlement agency shall maintain sufficient records of
7 the business affairs related to real estate regulated pursuant to
8 this act for the purpose of ensuring that the settlement agent is in
9 compliance with the requirements of this act. The settlement agency
10 shall retain records pertaining to each settlement handled for not
11 less than five (5) years after the settlement transaction is
12 completed. The Commissioner shall promulgate rules, as needed, to
13 prescribe the specified record entries and documents to be kept.

14 F. Every settlement agency shall keep, at the place of business
15 of the licensee, the usual and customary records pertaining to
16 escrow, closing, and settlement transactions. All records as to any
17 particular transactions shall be kept available and open for
18 inspection by the Commissioner or a designee of the Commissioner at
19 any time during business hours for three (3) years immediately
20 following the date of completion of the transaction.

21 G. All settlement statements for transactions related to real
22 estate regulated pursuant to this act shall be in writing and the
23 settlement agent and settlement agency shall be identified by name
24 and business address.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5024 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. All funds deposited with the settlement agency in connection
5 with an escrow, settlement, or closing shall be deposited in an
6 escrow account in a financial institution not later than the close
7 of the next business day, in accordance with the following
8 requirements:

9 1. The funds shall be the property of the person entitled to
10 the funds pursuant to the provisions of the escrow, settlement, or
11 closing instructions and shall be segregated in a bookkeeping or
12 accounting manner that permits the funds to be identified on an
13 individual basis; and

14 2. The funds shall be applied only in accordance with the terms
15 of the individual instructions or agreements pursuant to which the
16 funds are accepted.

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

22 C. All funds received or deposited with the settlement agency
23 shall be good funds and shall be received and deposited before any
24 disbursements may be made.

1 D. Although funds are designated as good funds, a settlement
2 agency shall not be required to disburse those funds if reasonable
3 business judgment would indicate that the funds may not be collected
4 or that there is a dispute concerning disbursement.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 5025 of Title 36, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The Insurance Commissioner may suspend, revoke, refuse to
9 issue or renew a license, or place on probation or censure any
10 holder of a license issued pursuant to the provisions of this act,
11 or impose any combination of these actions for any one or more of
12 the following causes:

13 1. Knowingly or intentionally providing incorrect, misleading,
14 incomplete, or materially untrue information in the license
15 application;

16 2. Making substantial misrepresentations or false promises in
17 the conduct of business as a settlement agency or through
18 advertising;

19 3. Committing any act or cause for which issuance of the
20 license could have been refused had it existed and been known to the
21 Commissioner at the time of issuance;

22 4. Having been convicted or pleaded guilty or nolo contendere
23 in a court of competent jurisdiction after the issuance of the
24 license in this or any other state of the crime of forgery,

1 embezzlement, obtaining money under false pretenses, extortion,
2 conspiracy to defraud, fraud, or any similar offense;

3 5. Failing to pay the fees or fines imposed pursuant to the
4 provisions of this act;

5 6. Failing to comply with an order lawfully issued pursuant to
6 the provisions of this act;

7 7. Giving or receiving any fee, rebate, discount, or other
8 thing of value either directly or indirectly for the referral of
9 settlements services other than commissions paid or received as
10 commissions for the sale of title insurance;

11 8. Giving or receiving any portion, split, or percentage of any
12 charge made or received for settlement services other than for
13 services actually performed or commissions earned;

14 9. Having knowledge that a violation by an individual licensee
15 was known or should have been known by one or more of the partners,
16 officers, or managers acting on behalf of the settlement agency and
17 the violation was neither reported to the Commissioner in a timely
18 manner nor resulted in corrective action being taken; and

19 10. Having violated any provision of this act.

20 B. The Commissioner shall notify and advise the applicant or
21 licensee in writing of a denial of a license or renewal and the
22 reason for the denial or nonrenewal. A hearing may be requested
23 according to the following:

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1 1. The applicant or licensee may make written demand upon the
2 Commissioner within thirty (30) days of the date the notification
3 from the Commissioner for a hearing before the Commissioner or an
4 independent hearing examiner to determine the reasonableness of the
5 action taken by the Commissioner; and

6 2. The hearing shall be heard within a reasonable time period
7 and shall be held pursuant to the provisions of the Administrative
8 Procedures Act.

9 C. In addition to the penalties imposed in subsection A of this
10 section, the Commissioner is authorized to levy a civil penalty for
11 any violation of the provisions of this act of not less than One
12 Hundred Dollars (\$100.00) nor more than One Thousand Dollars
13 (\$1,000.00) for each occurrence. This penalty shall be enforced in
14 the same manner in which civil judgments are enforced.

15 D. The Commissioner shall retain the authority to enforce the
16 provisions of, and impose any penalty or remedy authorized by, this
17 act and the Oklahoma Insurance Code against any person who is under
18 investigation for or charged with a violation of this act and the
19 Oklahoma Insurance Code even if the license of the person has been
20 surrendered or has lapsed by operation of law.

21 E. Files pertaining to investigations or legal matters
22 containing information concurring with a current and ongoing
23 investigation of allegations of violations of the Oklahoma Insurance
24 Code by a licensed agent shall not be available for public

1 inspection without proper judicial authorization; however, a
2 licensee under investigation for alleged violations of the Oklahoma
3 Insurance Code, or against whom an action for alleged violations of
4 the Oklahoma Insurance Code has been commenced, may view evidence
5 and complaints pertaining to the investigation, other than
6 privileged information, at reasonable times at the office of the
7 Commissioner. All qualification examination materials, booklets and
8 answers for any license authorized to be issued by the Commissioner
9 under any statute shall not be available for public inspection.

10 F. The Commissioner may issue a duplicate license for any lost,
11 stolen or destroyed license issued pursuant to this act upon an
12 affidavit of the licensee prescribed by the Commissioner concerning
13 the facts of the loss, theft or destruction.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 5026 of Title 36, unless there
16 is created a duplication in numbering, reads as follows:

17 Each settlement agent shall complete a program of continuing
18 education established by the Insurance Commissioner in subject areas
19 designed to enhance technical and general knowledge in the escrow,
20 closing, and settlement services process whether online or off
21 premises. The program shall be in accordance with the following:

22 1. The Commissioner may establish a program of continuing
23 education on an annual or biennial basis;

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1 2. The Commissioner shall establish the number of hours
2 required to comply with a continuing education requirement, not to
3 exceed eight (8) clock hours in any one (1) calendar year;

4 3. The Commissioner shall be a provider of continuing education
5 and have sole authority to approve courses and providers of
6 continuing education;

7 4. Each settlement agency shall be allowed to provide
8 continuing education to settlement agents as required by this
9 section, provided, that the continuing education meets the general
10 standards for education otherwise established by the Commissioner;

11 5. Each provider of continuing education programs shall, after
12 approval by the Commissioner, submit an annual fee of Two Hundred
13 Dollars (\$200.00) to the Commissioner unless having fewer than five
14 employees and then a fee of One Hundred Dollars (\$100.00). Public-
15 funded educational institutions shall be exempt from this
16 subsection; and

17 6. Settlement agents who have at least twenty (20) years of
18 experience as a settlement agent shall be exempt from the provisions
19 of this section.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 5027 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The Insurance Commissioner shall adopt and promulgate any
24 rules as are necessary to implement the provisions of this act.

1 B. All fees and fines received pursuant to the provisions of
2 this act by the Commissioner shall be paid into the State Treasury
3 to the credit of the State Insurance Commissioner Revolving Fund for
4 the purpose of implementing the provisions of this act.

5 SECTION 8. This act shall become effective November 1, 2013."

6 Passed the Senate the 16th day of April, 2013.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2013.

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Presiding Officer of the House
of Representatives

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