

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1884 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Don Armes

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 1884

By: Armes

7  
8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to insurance; requiring certain  
10 individuals to comply with regulation of transactions  
11 involving certain security and real estate; defining  
12 terms; providing for licensing as settlement agent  
13 agency; allowing Insurance Commissioner access to  
14 certain files of settlement agent or agency; stating  
15 licensing requirements; requiring independent annual  
16 audit of certain accounts; requiring settlement  
17 agency to provide copy of audit to certain entities  
18 within specific time period; requiring maintenance of  
19 certain records; providing time for retention of  
20 certain records; providing for deposit of certain  
21 funds into escrow account; stating requirements of  
22 escrow account and funds held in escrow; providing  
23 for suspension, revocation, or refusal to issue or  
24 renew certain licenses; listing causes of suspension,  
revocation, or refusal to issue or renew certain  
licenses; providing for written notification of  
denial or nonrenewal of license; providing for  
hearing on denial or nonrenewal; stating requirements  
for request for hearing; allowing assessment of  
certain penalties by Insurance Commissioner;  
requiring judicial authorization for public  
inspection of certain materials; allowing issuance of  
duplicate license under certain circumstances;  
requiring continuing education; requiring Insurance  
Commissioner to establish certain continuing  
education programs; stating requirements of certain  
continuing education programs; exempting certain  
individuals from continuing education requirements;  
requiring Insurance Commissioner to adopt and

1 promulgate certain rules; requiring fees and fines to  
2 be paid into certain fund; providing for  
3 codification; and providing an effective date.

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

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

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

17 As used in this act:

18 1. "Commissioner" means the Insurance Commissioner of the State  
19 of Oklahoma;

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

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

5           4. "Escrow, closing, or settlement services" means the  
6 administrative and clerical services required to carry out the terms  
7 of contracts affecting real estate including, but not limited to,  
8 the sale, exchange, or mortgaging of real estate. These services  
9 include, but are not limited to, placing orders for title insurance,  
10 placing orders for abstracts, receiving money and issuing receipts  
11 for money received from any party to the transaction, ordering loan  
12 checks and payoffs, ordering surveys and inspections, preparing  
13 settlement statements, receiving and disbursing funds, completing  
14 form documents, and sending the recorded documents and the title  
15 policies to the appropriate parties;

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

19           6. "Good funds" means:

- 20           a. cash or wire transfers,
- 21           b. certified checks, cashier's checks, and teller's  
22           checks, which have been drawn on a financial  
23           institution and for which a transaction code has been  
24           issued pursuant to, and in compliance with, a fully

1           executed, immediately available funds procedure  
2           agreement with the financial institution,

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

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

12           e.    United States Treasury checks,

13           f.    State of Oklahoma warrants,

14           g.    checks issued by an Oklahoma municipality or county,  
15           and

16           h.    a check from a settlement agent;

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

18           a.    with respect to a real estate transaction, a lender,  
19           seller, purchaser, or borrower, and

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

23        8.    "Person" means an individual, company, insurer, limited  
24        liability company, association, organization, society, reciprocal or

1 inter-insurance exchange, partnership, syndicate, business trust,  
2 corporation, or other legal entity, Lloyd's association, and entity  
3 and association, group or department of underwriters;

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

19 10. "Settlement agent" means an individual who has been  
20 licensed by the Commissioner pursuant to the provisions of this act,  
21 other than a party to the real estate transaction, who provides  
22 escrow, closing, or settlement services in connection with a  
23 transaction related to real estate in this state;

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

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

10 13. "Transaction" means the purchase and sale, mortgage,  
11 exchange, or other act for which a settlement agency receives trust  
12 funds or documents or both.

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

16 A. Except as otherwise provided in this subsection, no  
17 individual shall hold himself or herself out to be, or act in the  
18 capacity of a settlement agent unless licensed by the Insurance  
19 Commissioner. A lender, seller, purchaser, or borrower shall not  
20 contract with any person to act in the capacity of a settlement  
21 agent with respect to a real estate settlement unless that person is  
22 licensed as a settlement agent or is an attorney licensed to  
23 practice in this state acting in that capacity. A settlement agent  
24 operating in compliance with the requirements of this act or a party

1 to the real estate transaction may provide escrow, closing, or  
2 settlement services and receive compensation for these services.

3 B. No person shall hold himself or herself out to be, or act in  
4 the capacity of a settlement agency unless licensed by the  
5 Commissioner. A lender, seller, purchaser, or borrower shall not  
6 contract with any person to act in the capacity of a settlement  
7 agency with respect to a real estate settlement unless that person  
8 is licensed as a settlement agency. A settlement agency operating  
9 in compliance with the requirements of this act or a party to the  
10 real estate transaction may provide escrow, closing, or settlement  
11 services and receive compensation for these services.

12 C. Upon reasonable notice to a settlement agent or settlement  
13 agency, the Commissioner, or designee of the Commissioner, shall  
14 have access to files of the settlement agent or settlement agency  
15 for inspection and copying during any investigation of a settlement  
16 agent or settlement agency.

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

20 A. An individual who is eighteen (18) years of age or older may  
21 apply to obtain a license as a settlement agent by submitting an  
22 application on a form prescribed by the Insurance Commissioner  
23 accompanied by a nonrefundable application fee of Thirty-five  
24 Dollars (\$35.00). Upon approval by the Commissioner of the

1 application and payment of license fee of One Hundred Dollars  
2 (\$100.00), the Commissioner shall issue a license authorizing the  
3 individual to act as a settlement agent. In addition to the  
4 requirements of this subsection, the settlement agent license:

5 1. Shall be valid for a period of one (1) year; and

6 2. May be renewed annually upon application and approval by the  
7 Commissioner and upon payment of a renewal fee of Sixty Dollars  
8 (\$60.00).

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

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

19 a. the applicant has obtained errors and omissions  
20 insurance from a company licensed to do business in  
21 this state in the amount of Two Hundred Fifty Thousand  
22 Dollars (\$250,000.00) per claim with an aggregate  
23 limit of Five Hundred Thousand Dollars (\$500,000.00)  
24 and with a deductible of not greater than Twenty-five

1 Thousand Dollars (\$25,000.00); provided, in the event  
2 errors and omissions insurance is unavailable  
3 generally, the Commissioner shall promulgate rules for  
4 alternative methods to comply with the provisions of  
5 this subparagraph, and

6 b. the applicant has obtained a blanket fidelity bond  
7 covering all settlement agents employed by the  
8 settlement agency in an amount of not less than One  
9 Hundred Fifty Thousand Dollars (\$150,000.00) and with  
10 a deductible not to exceed fifteen percent (15%) of  
11 the bond penalty. The bond shall provide coverage to  
12 the buyer, seller, lender and title insurance  
13 underwriter insuring against loss due to employee  
14 dishonesty, defalcation, or embezzlement. In addition  
15 to the requirements of this subparagraph, the  
16 following shall be met:

- 17 (1) the bond shall be executed by an insurance  
18 company authorized to do business in this state,
- 19 (2) the required bond premium shall be paid by the  
20 settlement agency,
- 21 (3) the bond term shall be for the same period of  
22 time as the term of the settlement agency  
23 license, and documentation of coverage shall be  
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1 provided with the application for license  
2 renewal, and

3 (4) a bonding company cancelling a bond shall give  
4 written notice of the cancellation to the  
5 Insurance Department. The cancellation shall not  
6 become effective until thirty (30) days after  
7 receipt of the written notice by the Insurance  
8 Department;

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

12 3. The settlement agency license shall be valid for a period of  
13 one (1) year; and

14 4. A settlement agency license may be renewed annually upon  
15 application and approval by the Commissioner and upon payment of a  
16 renewal fee of Sixty Dollars (\$60.00).

17 C. Failure to comply with the errors and omissions and bonding  
18 requirement shall constitute grounds for immediate forfeiture of the  
19 settlement agency license.

20 D. At least once each twelve-month period every settlement  
21 agency shall cause an audit of their escrow accounts to be conducted  
22 by an independent certified public accountant. In addition to this  
23 requirement, the following shall be met:

1        1. The settlement agency shall provide a copy of its audit  
2 report to the Commissioner not later than sixty (60) days after the  
3 date on which the settlement agency receives the audit; and

4        2. A settlement agency that is a licensed title insurance  
5 agency shall also provide a copy of the audit report to each title  
6 insurance company it represents. In lieu of the annual audit, a  
7 settlement agency that is licensed as a title insurance agent may  
8 allow each title insurance company for which it has an appointment  
9 to conduct an analysis of its escrow accounts in accordance with  
10 regulations promulgated by the Insurance Department of this state,  
11 as appropriate, at least once each consecutive twelve-month period.  
12 Each title insurance company conducting the analysis shall submit a  
13 copy of its analysis report to the appropriate licensing authority  
14 not later than sixty (60) days after the date on which the analysis  
15 is completed. With consent of the title insurance agent, a title  
16 insurance company may share the results of its analysis with other  
17 title insurance companies that will accept the same in lieu of  
18 conducting separate analyses.

19        E. The settlement agency shall maintain sufficient records of  
20 the business affairs related to real estate regulated pursuant to  
21 this act for the purpose of ensuring that the settlement agent is in  
22 compliance with the requirements of this act. The settlement agency  
23 shall retain records pertaining to each settlement handled for not  
24 less than of five (5) years after the settlement transaction is

1 completed. The Commissioner shall promulgate rules, as needed, to  
2 prescribe the specified record entries and documents to be kept.

3 F. Every settlement agency shall keep, at the place of business  
4 of the licensee, the usual and customary records pertaining to  
5 escrow, closing, and settlement transactions. All records as to any  
6 particular transactions shall be kept available and open for  
7 inspection by the Commissioner or a designee of the Commissioner at  
8 any time during business hours for three (3) years immediately  
9 following the date of completion of the transaction.

10 G. All settlement statements for transactions related to real  
11 estate regulated pursuant to this act shall be in writing and the  
12 settlement agent and settlement agency shall be identified by name  
13 and business address.

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

17 A. All funds deposited with the settlement agency in connection  
18 with an escrow, settlement, or closing shall be deposited in an  
19 escrow account in a financial institution not later than the close  
20 of the next business day, in accordance with the following  
21 requirements:

22 1. The funds shall be the property of the person entitled to  
23 the funds pursuant to the provisions of the escrow, settlement, or  
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1 closing instructions and shall be segregated in a manner that  
2 permits the funds to be identified on an individual basis; and

3 2. The funds shall be applied only in accordance with the terms  
4 of the individual instructions or agreements pursuant to which the  
5 funds are accepted.

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

11 C. All funds received or deposited with the settlement agency  
12 shall be good funds and shall be received and deposited before any  
13 disbursements may be made.

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

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

21 A. The Insurance Commissioner may suspend, revoke, refuse to  
22 issue or renew a license, or place on probation or censure any  
23 holder of a license issued pursuant to the provisions of this act,

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1 or impose any combination of these actions for any one or more of  
2 the following causes:

3 1. Providing incorrect, misleading, incomplete, or materially  
4 untrue information in the license application;

5 2. Making substantial misrepresentations or false promises in  
6 the conduct of business as a settlement agency or through  
7 advertising;

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

11 4. Having been convicted or pleaded guilty or nolo contendere  
12 in a court of competent jurisdiction after the issuance of the  
13 license in this or any other state of the crime of forgery,  
14 embezzlement, obtaining money under false pretenses, extortion,  
15 conspiracy to defraud, fraud, or any similar offense;

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

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

20 7. Giving or receiving any fee, rebate, discount, or other  
21 thing of value either directly or indirectly for the referral of  
22 escrow, closing, or settlements services;

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1 8. Giving or receiving any portion, split, or percentage of any  
2 charge made or received for settlement services other than for  
3 services actually performed;

4 9. Having knowledge that a violation by an individual licensee  
5 was known or should have been known by one or more of the partners,  
6 officers, or managers acting on behalf of the settlement agency and  
7 the violation was neither reported to the Commissioner nor resulted  
8 in corrective action being taken; and

9 10. Having violated any provision of this act.

10 B. The Commissioner shall notify and advise the applicant or  
11 licensee in writing of a denial of a license or renewal and the  
12 reason for the denial or nonrenewal. A hearing may be requested  
13 according to the following:

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

19 2. The hearing shall be heard within a reasonable time period  
20 and shall be held pursuant to the provisions of the Administrative  
21 Procedures Act.

22 C. In addition to the penalties imposed in subsection A of this  
23 section, the Commissioner is authorized to levy a civil penalty for  
24 any violation of the provisions of this act of not less than One

1 Hundred Dollars (\$100.00) nor more than One Thousand Dollars  
2 (\$1,000.00) for each occurrence. This penalty shall be enforced in  
3 the same manner in which civil judgments are enforced.

4 D. The Commissioner shall retain the authority to enforce the  
5 provisions of, and impose any penalty or remedy authorized by, this  
6 act and the Oklahoma Insurance Code against any person who is under  
7 investigation for or charged with a violation of this act and the  
8 Oklahoma Insurance Code even if the license of the person has been  
9 surrendered or has lapsed by operation of law.

10 E. Files pertaining to investigations or legal matters  
11 containing information concurring with a current and ongoing  
12 investigation of allegations of violations of the Oklahoma Insurance  
13 Code by a licensed agent shall not be available for public  
14 inspection without proper judicial authorization; however, a  
15 licensee under investigation for alleged violations of the Oklahoma  
16 Insurance Code, or against whom an action for alleged violations of  
17 the Oklahoma Insurance Code has been commenced, may view evidence  
18 and complaints pertaining to the investigation, other than  
19 privileged information, at reasonable times at the office of the  
20 Commissioner. All qualification examination materials, booklets and  
21 answers for any license authorized to be issued by the Commissioner  
22 under any statute shall not be available for public inspection.

23 F. The Commissioner may issue a duplicate license for any lost,  
24 stolen or destroyed license issued pursuant to this act upon an

1 affidavit of the licensee prescribed by the Commissioner concerning  
2 the facts of the loss, theft or destruction.

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

6 Each settlement agent shall complete a program of continuing  
7 education established by the Insurance Commissioner in subject areas  
8 designed to enhance technical and general knowledge in the escrow,  
9 closing, and settlement services process. The program shall be in  
10 accordance with the following:

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

13 2. The Commissioner shall establish the number of hours  
14 required to comply with a continuing education requirement, not to  
15 exceed ten (10) clock hours in any one (1) calendar year;

16 3. The Commissioner shall have sole authority to approve  
17 courses and providers of continuing education;

18 4. Each settlement agency shall be allowed to provide  
19 continuing education to settlement agents as required by this  
20 section, provided, that the continuing education meets the general  
21 standards for education otherwise established by the Commissioner;

22 5. Each provider of continuing education programs shall, after  
23 approval by the Commissioner, submit an annual fee of Two Hundred  
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1 Dollars (\$200.00) to the Commissioner. Public-funded educational  
2 institutions shall be exempt from this subsection; and

3 6. Settlement agents who are sixty-five (65) years of age or  
4 older and who have at least twenty (20) years of experience as a  
5 settlement agent shall be exempt from the provisions of this  
6 section.

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

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

12 B. All fees and fines received pursuant to the provisions of  
13 this act by the Commissioner shall be paid into the State Treasury  
14 to the credit of the State Insurance Commissioner Revolving Fund for  
15 the purpose of implementing the provisions of this act.

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

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18 54-1-7104 LRB 02/20/13

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