

1 ENGROSSED HOUSE
2 BILL NO. 1884

By: Armes and Russ of the House
and
Johnson (Rob) of the Senate

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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
14 renew certain licenses - written notification of
15 denial or nonrenewal of license - judicial
16 authorization for public inspection of certain
17 materials - continuing education programs -
18 effective date]
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21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

10 As used in this act:

11 1. "Commissioner" means the Insurance Commissioner of the State
12 of Oklahoma;

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

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

21 4. "Escrow, closing, or settlement services" means the
22 administrative and clerical services required to carry out the terms
23 of contracts affecting real estate including, but not limited to,
24 the sale, exchange, or mortgaging of real estate. These services

1 include, but are not limited to, placing orders for title insurance,
2 placing orders for abstracts, receiving money and issuing receipts
3 for money received from any party to the transaction, ordering loan
4 checks and payoffs, ordering surveys and inspections, preparing
5 settlement statements, determining that all closing documents
6 conform to the contract requirements of the parties, setting the
7 closing appointment, following up with the parties to ensure that
8 the transaction progresses to closing, ascertaining that the
9 instructions of the lender have been satisfied, conducting a closing
10 conference at which the documents are executed, receiving and
11 disbursing funds, completing form documents, and sending the
12 recorded documents and the title policies to the appropriate
13 parties;

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

17 6. "Good funds" means:

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

- 1 c. uncertified funds in the amount of not more than One
2 Thousand Five Hundred Dollars (\$1,500.00) including,
3 but not limited to, checks, traveler's checks, money
4 orders, and negotiable orders of withdrawal; provided,
5 multiple items shall not be used to avoid the one-
6 thousand-five-hundred-dollar limitation,
- 7 d. uncertified funds in excess of One Thousand Five
8 Hundred Dollars (\$1,500.00), when collected by the
9 financial institution,
- 10 e. United States Treasury checks,
- 11 f. State of Oklahoma warrants,
- 12 g. checks issued by an Oklahoma municipality or county,
13 and
- 14 h. a check from a settlement agent;

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

- 16 a. with respect to a real estate transaction, a lender,
17 seller, purchaser, or borrower, and
- 18 b. with respect to a corporate purchaser, any entity
19 which is a subsidiary of, or under common ownership
20 with, that corporate purchaser;

21 8. "Person" means an individual, company, insurer, limited
22 liability company, association, organization, society, reciprocal or
23 inter-insurance exchange, partnership, syndicate, business trust,
24

1 corporation, or other legal entity, Lloyd's association, and entity
2 and association, group or department of underwriters;

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

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

23 11. "Settlement agency" means a person other than an individual
24 which employs settlement agents to provide escrow, closing, or

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

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

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

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

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

20 A. Except as otherwise provided in this subsection, no
21 individual shall hold himself or herself out to be, or act in the
22 capacity of a settlement agent unless licensed by the Insurance
23 Commissioner. A lender, seller, purchaser, or borrower shall not
24 contract with any person to act in the capacity of a settlement

1 agent with respect to a real estate settlement unless that person is
2 licensed as a settlement agent or is an attorney licensed to
3 practice in this state acting in that capacity. A settlement agent
4 operating in compliance with the requirements of this act or a party
5 to the real estate transaction may provide escrow, closing, or
6 settlement services and receive compensation for these services.

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

20 C. Upon reasonable notice to a settlement agent or settlement
21 agency, the Commissioner, or designee of the Commissioner, shall
22 have access to files of the settlement agent or settlement agency
23 for inspection and copying during any investigation of a settlement
24 agent or settlement agency.

1 D. Federal- and state-chartered banks and employees of federal-
2 and state-chartered banks shall not be subject to the licensing
3 requirements of this section; provided that the bank or employee is
4 currently providing escrow, closing, or settlement services to bank
5 customers.

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

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

- 18 1. Shall be valid for a period of two (2) years; and
- 19 2. May be renewed annually upon application and approval by the
20 Commissioner and upon payment of a renewal fee of Sixty Dollars
21 (\$60.00).

22 B. A person seeking to obtain a license as a settlement agency
23 shall submit an application on a form prescribed by the Commissioner
24 accompanied by a nonrefundable application fee of Thirty-five

1 Dollars (\$35.00). In addition to the requirement of this
2 subsection:

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

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

19 b. the applicant has obtained a blanket fidelity bond
20 covering all settlement agents employed by the
21 settlement agency in an amount of not less than One
22 Hundred Thousand Dollars (\$100,000.00) and with a
23 deductible not to exceed fifteen percent (15%) of the
24 bond penalty. The bond shall provide coverage to the

1 buyer, seller, lender and title insurance underwriter
2 insuring against loss due to employee dishonesty,
3 defalcation, or embezzlement. In addition to the
4 requirements of this subparagraph, the following shall
5 be met:

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

8 (2) the required bond premium shall be paid by the
9 settlement agency,

10 (3) the bond term shall be for the same or greater
11 period of time as the term of the settlement
12 agency license, and documentation of coverage
13 shall be provided with the application for
14 license renewal, and

15 (4) a bonding company cancelling a bond shall give
16 written notice of the cancellation to the
17 Insurance Department. The cancellation shall not
18 become effective until thirty (30) days after
19 receipt of the written notice by the Insurance
20 Department;

21 2. Title insurance underwriters and their wholly-owned
22 subsidiaries shall be exempt from the requirement of obtaining
23 errors and omissions insurance or a blanket fidelity bond;
24

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

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

6 C. Failure to comply with the errors and omissions and bonding
7 requirement shall constitute grounds for forfeiture of the
8 settlement agency license. The Commission shall determine a
9 reasonable grace period for the agency to replace the canceled bond.

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

15 In lieu of the annual audit, a settlement agency that is
16 licensed as a title insurance agent may allow, with approval from
17 the title agency, each title insurance company for which it has an
18 appointment to conduct an analysis of its escrow accounts in
19 accordance with regulations promulgated by the Insurance Department
20 of this state, as appropriate, at least once each consecutive
21 twelve-month period. With consent of the title insurance agent or
22 agency, a title insurance company may share the results of its
23 analysis with other title insurance companies that will accept the
24 same in lieu of conducting separate analyses.

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

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

16 G. All settlement statements for transactions related to real
17 estate regulated pursuant to this act shall be in writing and the
18 settlement agent and settlement agency shall be identified by name
19 and business address.

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

23 A. All funds deposited with the settlement agency in connection
24 with an escrow, settlement, or closing shall be deposited in an

1 escrow account in a financial institution not later than the close
2 of the next business day, in accordance with the following
3 requirements:

4 1. The funds shall be the property of the person entitled to
5 the funds pursuant to the provisions of the escrow, settlement, or
6 closing instructions and shall be segregated in a bookkeeping or
7 accounting manner that permits the funds to be identified on an
8 individual basis; and

9 2. The funds shall be applied only in accordance with the terms
10 of the individual instructions or agreements pursuant to which the
11 funds are accepted.

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

17 C. All funds received or deposited with the settlement agency
18 shall be good funds and shall be received and deposited before any
19 disbursements may be made.

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

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

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

9 1. Knowingly or intentionally providing incorrect, misleading,
10 incomplete, or materially untrue information in the license
11 application;

12 2. Making substantial misrepresentations or false promises in
13 the conduct of business as a settlement agency or through
14 advertising;

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

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

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

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

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

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

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

15 10. Having violated any provision of this act.

16 B. The Commissioner shall notify and advise the applicant or
17 licensee in writing of a denial of a license or renewal and the
18 reason for the denial or nonrenewal. A hearing may be requested
19 according to the following:

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

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

4 C. In addition to the penalties imposed in subsection A of this
5 section, the Commissioner is authorized to levy a civil penalty for
6 any violation of the provisions of this act of not less than One
7 Hundred Dollars (\$100.00) nor more than One Thousand Dollars
8 (\$1,000.00) for each occurrence. This penalty shall be enforced in
9 the same manner in which civil judgments are enforced.

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

16 E. Files pertaining to investigations or legal matters
17 containing information concurring with a current and ongoing
18 investigation of allegations of violations of the Oklahoma Insurance
19 Code by a licensed agent shall not be available for public
20 inspection without proper judicial authorization; however, a
21 licensee under investigation for alleged violations of the Oklahoma
22 Insurance Code, or against whom an action for alleged violations of
23 the Oklahoma Insurance Code has been commenced, may view evidence
24 and complaints pertaining to the investigation, other than

1 privileged information, at reasonable times at the office of the
2 Commissioner. All qualification examination materials, booklets and
3 answers for any license authorized to be issued by the Commissioner
4 under any statute shall not be available for public inspection.

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

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

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

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

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

22 3. The Commissioner shall be a provider of continuing education
23 and have sole authority to approve courses and providers of
24 continuing education;

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

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

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

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

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

19 B. All fees and fines received pursuant to the provisions of
20 this act by the Commissioner shall be paid into the State Treasury
21 to the credit of the State Insurance Commissioner Revolving Fund for
22 the purpose of implementing the provisions of this act.

