

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1884

By: Armes of the House

and

Johnson (Rob) of the Senate

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11 COMMITTEE SUBSTITUTE

12 An Act relating to insurance; requiring certain
13 individuals to comply with regulation of transactions
14 involving certain security and real estate; defining
15 terms; providing for licensing as settlement agent or
16 agency; allowing Insurance Commissioner access to
17 certain files of settlement agent or agency; stating
18 licensing requirements; requiring independent, annual
19 audit of certain accounts; requiring maintenance of
20 certain records; providing time for retention of
21 certain records; providing for deposit of certain
22 funds into escrow account; stating requirements of
23 escrow account and funds held in escrow; providing
24 for suspension, revocation, or refusal to issue or
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;

1 requiring continuing education; requiring Insurance
2 Commissioner to establish certain continuing
3 education programs; stating requirements of certain
4 continuing education programs; exempting certain
5 individuals from continuing education requirements;
6 requiring Insurance Commissioner to adopt and
7 promulgate certain rules; requiring fees and fines to
8 be paid into certain fund; providing for
9 codification; and providing an effective date.

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

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

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

23 As used in this act:

24 1. "Commissioner" means the Insurance Commissioner of the State
of Oklahoma;

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

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

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

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1 recorded documents and the title policies to the appropriate
2 parties;

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

6 6. "Good funds" means:

7 a. cash or wire transfers,

8 b. certified checks, cashier's checks, and teller's
9 checks, which have been drawn on a financial
10 institution and for which a transaction code has been
11 issued pursuant to, and in compliance with, a fully
12 executed, immediately available funds procedure
13 agreement with the financial institution,

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

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

23 e. United States Treasury checks,
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- 1 f. State of Oklahoma warrants,
2 g. checks issued by an Oklahoma municipality or county,
3 and
4 h. a check from a settlement agent;

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

- 6 a. with respect to a real estate transaction, a lender,
7 seller, purchaser, or borrower, and
8 b. with respect to a corporate purchaser, any entity
9 which is a subsidiary of, or under common ownership
10 with, that corporate purchaser;

11 8. "Person" means an individual, company, insurer, limited
12 liability company, association, organization, society, reciprocal or
13 inter-insurance exchange, partnership, syndicate, business trust,
14 corporation, or other legal entity, Lloyd's association, and entity
15 and association, group or department of underwriters;

16 9. "Received and deposited" means that good funds are in the
17 possession of an employee or representative of the settlement agency
18 and a record of receipt has been entered on the books of the
19 settlement agency, but only if the funds are actually delivered for
20 deposit to an escrow account at the financial institution in a
21 timely manner, which shall not exceed three (3) business days as
22 defined in Federal Reserve Board Regulations at CC, 12 CFE, Part
23 229, after the funds are received. If a settlement agent agrees to
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1 postponement of deposit for a period of time longer than three (3)
2 business days after the date the funds are received, then the funds
3 shall be deposited not later than the date set out in the written
4 instructions. In case of a wire transfer or other direct deposit,
5 good funds shall be considered to be received and deposited when the
6 financial institution notifies the settlement agent that the funds
7 have been received;

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

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

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

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

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

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

12 A. Except as otherwise provided in this subsection, no
13 individual shall hold himself or herself out to be, or act in the
14 capacity of a settlement agent unless licensed by the Insurance
15 Commissioner. A lender, seller, purchaser, or borrower shall not
16 contract with any person to act in the capacity of a settlement
17 agent with respect to a real estate settlement unless that person is
18 licensed as a settlement agent or is an attorney licensed to
19 practice in this state acting in that capacity. A settlement agent
20 operating in compliance with the requirements of this act or a party
21 to the real estate transaction may provide escrow, closing, or
22 settlement services and receive compensation for these services.

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

22 A. An individual who is eighteen (18) years of age or older may
23 apply to obtain a license as a settlement agent by submitting an
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1 application on a form prescribed by the Insurance Commissioner
2 accompanied by a nonrefundable application fee of Thirty-five
3 Dollars (\$35.00). Upon approval by the Commissioner of the
4 application and payment of license fee of One Hundred Dollars
5 (\$100.00), the Commissioner shall issue a license authorizing the
6 individual to act as a settlement agent. In addition to the
7 requirements of this subsection, the settlement agent license:

- 8 1. Shall be valid for a period of two (2) years; and
- 9 2. May be renewed annually upon application and approval by the
10 Commissioner and upon payment of a renewal fee of Sixty Dollars
11 (\$60.00).

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

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

- 22 a. the applicant has obtained errors and omissions
23 insurance from a company licensed to do business in
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~~Strike thru~~ language denotes deletion from present Statutes.

1 this state in the amount of Two Hundred Fifty Thousand
2 Dollars (\$250,000.00) per claim with an aggregate
3 limit of Five Hundred Thousand Dollars (\$500,000.00)
4 and with a deductible of not greater than Twenty-five
5 Thousand Dollars (\$25,000.00); provided, in the event
6 errors and omissions insurance is unavailable
7 generally, the Commissioner shall promulgate rules for
8 alternative methods to comply with the provisions of
9 this subparagraph,

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

21 (1) the bond shall be executed by an insurance
22 company authorized to do business in this state,
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1 (2) the required bond premium shall be paid by the
2 settlement agency,

3 (3) the bond term shall be for the same or greater
4 period of time as the term of the settlement
5 agency license, and documentation of coverage
6 shall be provided with the application for
7 license renewal, and

8 (4) a bonding company cancelling a bond shall give
9 written notice of the cancellation to the
10 Insurance Department. The cancellation shall not
11 become effective until thirty (30) days after
12 receipt of the written notice by the Insurance
13 Department;

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

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

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

22 C. Failure to comply with the errors and omissions and bonding
23 requirement shall constitute grounds for forfeiture of the
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1 settlement agency license. The Commission shall determine a
2 reasonable grace period for the agency to replace the canceled bond.

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

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

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

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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 bookkeeping or
2 accounting manner that permits the funds to be identified on an
3 individual basis; and

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

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

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

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

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

22 A. The Insurance Commissioner may suspend, revoke, refuse to
23 issue or renew a license, or place on probation or censure any

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1 holder of a license issued pursuant to the provisions of this act,
2 or impose any combination of these actions for any one or more of
3 the following causes:

4 1. Knowingly or intentionally providing incorrect, misleading,
5 incomplete, or materially untrue information in the license
6 application;

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

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

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

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

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

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

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

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

11 10. Having violated any provision of this act.

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

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

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

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

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

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

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

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

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

- 15 1. The Commissioner may establish a program of continuing
16 education on an annual or biennial basis;
- 17 2. The Commissioner shall establish the number of hours
18 required to comply with a continuing education requirement, not to
19 exceed eight (8) clock hours in any one (1) calendar year;
- 20 3. The Commissioner shall be a provider of continuing education
21 and have sole authority to approve courses and providers of
22 continuing education;

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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.

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

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3 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/04/2013 - DO
4 PASS, As Amended and Coauthored.
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