

1 **SENATE FLOOR VERSION**

2 April 4, 2013

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1884

6 By: Armes and Russ of the House

7 and

8 Johnson (Rob) of the Senate

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

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

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

24 In order to provide consumer protection safeguards relating to
licensing, financial responsibility, and the handling of settlement
funds, existing settlement agents and settlement agencies, as well
as an individual applying for a license as a settlement agent or a
person who intends to employ a settlement agent in this state shall

1 comply with the regulation of escrow, closing, or settlement
2 services transactions involving the purchase of, or lending on,
3 security or real estate located in this state as provided in
4 Sections 1 through 7 of this act.

5 As used in this act:

6 1. "Commissioner" means the Insurance Commissioner of the State
7 of Oklahoma;

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

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

16 4. "Escrow, closing, or settlement services" means the
17 administrative and clerical services required to carry out the terms
18 of contracts affecting real estate including, but not limited to,
19 the sale, exchange, or mortgaging of real estate. These services
20 include, but are not limited to, placing orders for title insurance,
21 placing orders for abstracts, receiving money and issuing receipts
22 for money received from any party to the transaction, ordering loan
23 checks and payoffs, ordering surveys and inspections, preparing
24 settlement statements, determining that all closing documents

1 conform to the contract requirements of the parties, setting the
2 closing appointment, following up with the parties to ensure that
3 the transaction progresses to closing, ascertaining that the
4 instructions of the lender have been satisfied, conducting a closing
5 conference at which the documents are executed, receiving and
6 disbursing funds, completing form documents, and sending the
7 recorded documents and the title policies to the appropriate
8 parties;

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

12 6. "Good funds" means:

13 a. cash or wire transfers,

14 b. certified checks, cashier's checks, and teller's
15 checks, which have been drawn on a financial
16 institution and for which a transaction code has been
17 issued pursuant to, and in compliance with, a fully
18 executed, immediately available funds procedure
19 agreement with the financial institution,

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

- 3 d. uncertified funds in excess of One Thousand Five
4 Hundred Dollars (\$1,500.00), when collected by the
5 financial institution,
- 6 e. United States Treasury checks,
- 7 f. State of Oklahoma warrants,
- 8 g. checks issued by an Oklahoma municipality or county,
9 and
- 10 h. a check from a settlement agent;

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

- 12 a. with respect to a real estate transaction, a lender,
13 seller, purchaser, or borrower, and
- 14 b. with respect to a corporate purchaser, any entity
15 which is a subsidiary of, or under common ownership
16 with, that corporate purchaser;

17 8. "Person" means an individual, company, insurer, limited
18 liability company, association, organization, society, reciprocal or
19 inter-insurance exchange, partnership, syndicate, business trust,
20 corporation, or other legal entity, Lloyd's association, and entity
21 and association, group or department of underwriters;

22 9. "Received and deposited" means that good funds are in the
23 possession of an employee or representative of the settlement agency
24 and a record of receipt has been entered on the books of the

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

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

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

22 12. "Settlement clerk" means an individual who has not been
23 licensed by the Commissioner pursuant to the provisions of this act,
24 but is employed by a licensed title agent or agency and is

1 supervised directly by a licensed agent and offices at the same
2 address of the licensed agent and assists in the duties of a closing
3 and clerical duties of real estate settlement;

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

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

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

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

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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. An individual
12 that is a party to the real estate transaction may provide escrow,
13 closing, or settlement services and receive compensation for these
14 services but not for the purposes of offering those services to the
15 public.

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

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

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

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

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

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

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

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

17 b. the applicant has obtained a blanket fidelity bond
18 covering all settlement agents employed by the
19 settlement agency in an amount of not less than One
20 Hundred Thousand Dollars (\$100,000.00) and with a
21 deductible not to exceed fifteen percent (15%) of the
22 bond penalty. The bond shall provide coverage to the
23 buyer, seller, lender and title insurance underwriter
24 insuring against loss due to employee dishonesty,

1 defalcation, or embezzlement. In addition to the
2 requirements of this subparagraph, the following shall
3 be met:

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

6 (2) the required bond premium shall be paid by the
7 settlement agency,

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

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

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

22 3. The settlement agency license shall be valid for a period of
23 two (2) years; and
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1 4. A settlement agency license may be renewed biannually upon
2 application and approval by the Commissioner and upon payment of a
3 renewal fee of Sixty Dollars (\$60.00).

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

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

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

23 E. The settlement agency shall maintain sufficient records of
24 the business affairs related to real estate regulated pursuant to

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

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

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

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

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

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

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

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

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

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

23 SECTION 8. This act shall become effective November 1, 2013.
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1 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE
April 4, 2013 - DO PASS AS AMENDED

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