STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1884 By: Armes

AS INTRODUCED

An Act relating to insurance; requiring certain individuals to comply with regulation of transactions involving certain security and real estate; defining terms; providing for licensing as settlement agent agency; allowing Insurance Commissioner access to certain files to settlement agent or agency; stating licensing requirements; requiring independent, annual audit of certain accounts; requiring settlement agency to provide copy of audit to certain entities within specific time period; requiring maintenance of certain records; providing time for retention of certain records; providing for deposit of certain funds into escrow account; stating requirements of escrow account and funds held in escrow; providing 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; 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 promulgate certain rules; requiring fees and fines to be paid into certain fund; providing for codification; and providing an effective date.

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

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

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

As used in this act:

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

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

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

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

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

6. “Good funds” means:

a. cash or wire transfers,

b. certified checks, cashier’s checks, and teller’s checks, which have been drawn on a financial

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

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

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

e. United States Treasury checks,

f. State of Oklahoma warrants,

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

h. a check from a settlement agent;

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

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

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

8. “Person” means an individual, company, insurer, limited liability company, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or other legal entity, Lloyd’s association, and entity and association, group or department of underwriters;

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

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

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

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

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

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

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

A. Except as otherwise provided in this subsection, no individual shall hold himself or herself out to be, or act in the capacity of a settlement agent unless licensed by the Insurance Commissioner. A lender, seller, purchaser, or borrower shall not contract with any person to act in the capacity of a settlement agent with respect to a real estate settlement unless that person is licensed as a settlement agent or is an attorney licensed to

practice in this state acting in that capacity. A settlement agent operating in compliance with the requirements of this act or a party to the real estate transaction may provide escrow, closing, or settlement services and receive compensation for these services.

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

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

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

A. An individual who is eighteen (18) years of age or older may apply to obtain a license as a settlement agent by submitting an application on a form prescribed by the Insurance Commissioner

accompanied by a nonrefundable application fee of Thirty-five Dollars ($35.00). Upon approval by the Commissioner of the application and payment of license fee of One Hundred Dollars ($100.00), the Commissioner shall issue a license authorizing the individual to act as a settlement agent. In addition to the requirements of this subsection, the settlement agent license:

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

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

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

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

a. the applicant has obtained errors and omissions insurance from a company licensed to do business in this state in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00) per claim with an aggregate

limit of Five Hundred Thousand Dollars ($500,000.00) and with a deductible of not greater than Twenty-five Thousand Dollars ($25,000.00); provided, in the event errors and omissions insurance is unavailable generally, the Commissioner shall promulgate rules for alternative methods to comply with the provisions of this subparagraph,

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

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

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

(3) the bond term shall be for the same period of time as the term of the settlement agency

license, and documentation of coverage shall be provided with the application for license renewal, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The funds shall be the property of the person entitled to the funds pursuant to the provisions of the escrow, settlement, or

closing instructions and shall be segregated in a manner that permits the funds to be identified on an individual basis; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Having violated any provision of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Each provider of continuing education programs shall, after approval by the Commissioner, submit an annual fee of Two Hundred

Dollars ($200.00) to the Commissioner. Public-funded educational institutions shall be exempt from this subsection; and

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

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

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

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

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

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