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QUARTERLY REPORT

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of the United States Code (*i.e.*, the HUD-1 Settlement Statement). Notwithstanding the fact that the Release does not require that the HUD-1 Settlement Statement be signed by the borrower or certified by the agent, your authors recommend that such a signature or certification be obtained in order to demonstrate compliance;

- written or electronic records reflecting communications between the licensee and the settlement agent verifying the disbursement date of the loan proceeds and identifying the name of the settlement agent providing the information and

the electronic or business address used to contact the settlement agent; or

- contemporaneous written or electronic records memorializing oral communications between the licensee and the settlement agent verifying the disbursement date of the loan proceeds and identifying the name and telephone number of the settlement agent providing the information.²

Note that, under the Release, the “disbursement date” refers to the date on which the majority of the loan proceeds are disbursed to the borrower, to a third party on behalf of the borrower,

or to the licensee to satisfy an existing obligation of the borrower and that the term “settlement agent” refers to the person that disburses funds from an escrow including an escrow agent, a controlled escrow company, a title insurance company, or an underwritten title company.

The Release states that when the Commissioner believes that compliance is uncertain or unclear from a review of the above information provided by the licensee, the Commissioner may request additional information to demonstrate compliance with section 2948.5. As a result, your authors recommend that lenders rely on a Final HUD-1 Settlement Statement which has been signed by the borrower and/or certified by the settlement agent in order to demonstrate compliance.

2. Given the ambiguous nature of this provision, we recommend caution in relying on it as a means to demonstrate compliance with section 2948.5.

Oklahoma Attorney General Opinion 07-12; Commission on Consumer Credit

By Eric L. Johnson*

On May 21, 2007 the Oklahoma Attorney General posted to his website (<http://www.oag.state.ok.us>) AG Opinion 07-12 in connection with a request by Oklahoma State Representative Lucky Lamons to opine on five questions involving the Oklahoma Commission on Consumer Credit (the Commission). The response to each of these questions is noted below.

The Commission is the policy-making and governing authority of the Oklahoma Department of Consumer Credit and is responsible for enforcement of the Oklahoma Uniform Consumer Credit Code, 14A Okla. Stat. 2001 & Supp. 2006, sections 1-101 – 9-101 (the U3C). Pursuant to 14A Okla. Stat. 2001, section 6-503, the composition of the voting members of the Commission essentially consists of two categories of members appointed by the Governor with the following distinctions:

1. Five at-large Commissioners initially with staggered terms of one, two, three, four and five year terms respectively.

which revert to five-year terms each on expiration of the initial term, with no more than three at-large members of the same political party; and

2. Three additional Commissioners with staggered terms of three, four and five year terms respectively, with no more than two of the additional Commissioners of the same political party and:
 - a. one must be actively engaged in the business of making supervised loans primarily pursuant to 14A Okla. Stat. 2001, section 3-508A;
 - b. one must be actively engaged in the business of making supervised loans primarily pursuant to 14A Okla. Stat. 2001, section 3-508B;
 - c. one must be actively engaged in the business of making pawnshop loans pursuant to the Oklahoma Pawnshop Act;

- d. recommendations from certain entities are required for appointment of the three additional Commissioners: one from the Oklahoma Consumer Finance Association, Inc., one from the Independent Finance Institute, Inc., and one from the Oklahoma Pawnbrokers Association, Inc.; and
- e. each recommending entity is required to submit twelve names for consideration to the Governor within thirty days of a vacancy.

In summary, the Attorney General opined on the five questions as follows:

- (1) The term “at large members” used in the context of appointing members to the Commission as provided in 14A Okla. Stat. 2001, section 6-503, means members who are not restricted by or exclusive of any particular business segment, district or region. However,

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I have verified the income amount provided by the Borrower by:

- _____ Salary.com
- _____ U.S. Department of Labor
- _____ Other: specify [i.e. VOE, pay stubs] _____

I have also discussed with the Borrower the items s/he has checked above, and have given him/her a completed copy of this worksheet.

I certify under penalty of perjury that the above is true and correct.

Name of Mortgage Broker/Banker: _____

License Number: _____

By:

Signature Date

Oklahoma Attorney General Opinion 07-12;...

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the words "actively engaged in" and "primarily," when used to determine the qualifications of the other three additional members of the Commission, may have a number of different applications depending on the facts and circumstances of a particular member. Determining these qualifications is a question of fact outside the scope of an Attorney General's Opinion. *See* 74 Okla. Stat. 2001, section 18b(A)(5).

- (2) In making appointments to the Commission, the appointment process, including the qualifications required of certain members to the Commission, as set forth in 14A Okla. Stat. 2001 section 6-503, must be followed by the Governor, with the advice and consent of the Senate. No other statutory criterion for appointment to the office is required

in determining the qualifications of members of the Commission.

- (3) Once duly appointed, a change in a member's profession or business activity could disqualify him or her from serving as a member of the Commission. Although all members of the Commission are eligible for reappointment, they still must possess the qualifications required under 14A Okla. Stat. 2001, section 6-503, in order to be properly reappointed.
- (4) The Governor has the power to remove a member of the Commission under the authority granted in 74 Okla. Stat. 2001, section 2 or declare a vacancy under 51 Okla. Stat. 2001, section 8 for the reasons stated in that section. In addition, the Attorney General, a

district attorney or a person interested in the position may initiate an action in the nature of quo warranto to remove a member of the Commission under the authority granted in 12 Okla. Stat. 2001, sections 1532 and 1533.

- (5) Once duly appointed, the members of the Commission have the power and authority to act in accordance with the provisions of the U3C. The rules or orders of the Commission involving the public interest and third persons, though made by members who are not qualified to hold office but act as de facto officers under color of title, are deemed valid, binding and enforceable. *See* Hatfield v. Jimerson, 365 P.2d 980, 982 (Okla. 1961).¹

1. The *Hatfield* court provided that "an 'officer de facto' is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interest of the public and third persons, where the * * * functions of the office are exercised by one who was in the actual possession of it under color of title."

ARTICLES SOLICITED

The *Quarterly Report* is seeking submission of manuscripts, for possible publication, on the following subjects: consumer protection and litigation; Truth in Lending and Regulation Z; access to consumer financial services (including fair housing, CRA, and equal credit opportunity); electronic commerce; credit and debit cards; credit insurance; mortgage lending; auto finance; UCC case law and revisions; banking law; debt collection; and bankruptcy. If you would like to contribute to an article or research project, please contact the Editor of the *Quarterly Report*.