

FIRST REGULAR SESSION

HOUSE BILL NO. 1040

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JONES.

2184H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 381.022 and 381.058, RSMo, and to enact in lieu thereof two new sections relating to title insurance.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 381.022 and 381.058, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 381.022 and 381.058, to read as follows:

381.022. 1. As used in sections 381.011 to 381.412, the following terms mean:

(1) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent, or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(2) "Qualified depository institution", an institution that is:

(a) Organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers;

(b) Regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies;

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules established by the director;

(3) "Security" or "security deposit", funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement under which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 2. A title insurer, title agency, or title agent not affiliated with a title agency may operate
18 as an escrow, security, settlement, or closing agent, provided that all funds deposited with the
19 title insurer, title agency, or title agent not affiliated with a title agency, pursuant to written
20 instructions in connection with any escrow, settlement, closing, or security deposit shall be
21 submitted for collection to or deposited in a separate fiduciary trust account or accounts in a
22 qualified depository institution no later than the close of the second business day after receipt,
23 in accordance with the following requirements:

24 (1) The funds regulated under this section shall be the property of the person or persons
25 entitled to them under the provisions of the escrow, settlement, security deposit, or closing
26 agreement and shall be segregated for each depository by escrow, settlement, security deposit,
27 or closing in the records of the title insurer, title agency, or title agent not affiliated with a title
28 agency, in a manner that permits the funds to be identified on an individual basis and in
29 accordance with the terms of the individual written instructions or agreements under which the
30 funds were accepted; and

31 (2) The funds shall be applied only in accordance with the terms of the individual written
32 instructions or agreements under which the funds were accepted.

33 3. It is unlawful for any person to:

34 (1) Commingle personal or any other moneys with escrow funds regulated under this
35 section;

36 (2) Use such escrow funds to pay or indemnify against debts of the title insurance agent
37 or of any other person;

38 (3) Use such escrow funds for any purpose other than to fulfill the terms of the individual
39 written escrow instructions after the necessary conditions of the written escrow instructions have
40 been met;

41 (4) Disburse any funds held in an escrow account unless the disbursement is made under
42 a written instruction or agreement specifying under what conditions and to whom such funds
43 may be disbursed or under an order of a court of competent jurisdiction; or

44 (5) Disburse any funds held in a security deposit account unless the disbursement is
45 made under a written agreement specifying:

46 (a) What actions the indemnitor shall take to satisfy his or her obligation under the
47 agreement;

48 (b) The duties of the title insurer, title agency, or title agent not affiliated with a title
49 agency with respect to disposition of the funds held, including a requirement to maintain
50 evidence of the disposition of the title exception before any balance may be paid over to the
51 depositing party or his or her designee; and

52 (c) Any other provisions the director may require by rule or order.

53 4. Notwithstanding the provisions of subsection 3 of this section, any bank credits, bank
54 services, interest, or similar consideration received on funds deposited in connection with any
55 escrow, settlement, security deposit, or closing may be retained by the title insurer, title agency,
56 or title agent not affiliated with a title agency as compensation for administration of the escrow
57 or security deposit, unless the specific written instructions for the funds or a governing statute
58 provides otherwise.

59 5. Notwithstanding the provisions of subsection 2 of this section, a title insurer, title
60 agency, or title agent is not authorized to provide such services as an escrow, security, settlement,
61 or closing agent in a residential real estate transaction unless as part of the same transaction the
62 title insurer, title agency, or title agent issues a commitment, binder, or title insurance policy and
63 closing protection letters have been issued protecting the buyer's, **lender's**, and the seller's
64 interests, or **if a title insurance policy is not being issued by the title insurer, title agency, or**
65 **title agent, the title insurer**, the title agency, or **title agent** has given written notice to the
66 affected person in a title insurance commitment or on a form approved by rule promulgated by
67 the director that the person's interest in the closing or settlement is not protected by the title
68 insurer, title agency, or title agent.

69 6. It is unlawful for any **title insurer**, title agency, or agent to engage in the handling of
70 an escrow, settlement or closing of a residential real estate transaction unless the escrow
71 handling, settlement or closing is conducted or performed in contemplation of and in conjunction
72 with the issuance of a title insurance policy [or] **and** a closing protection letter, or **if a title**
73 **insurance policy is not being issued by the title insurer, title agency, or title agent**, prior to
74 the receipt of any funds, the **title insurer**, title agency, or **title agent** clearly discloses to the
75 seller, buyer or lender involved in such escrow, settlement or closing, that no title insurer is
76 providing any protection for closing or settlement funds received by the title agency or agent.

77 7. A violation of any provision under this section is a level three violation under section
78 374.049.

381.058. 1. No insurer that transacts any class, type, or kind of business other than title
2 insurance shall be eligible for the issuance or renewal of a license to transact the business of title
3 insurance in this state nor shall title insurance be transacted, underwritten, or issued by any
4 insurer transacting or licensed to transact any other class, type, or kind of business.

5 2. A title insurer shall not engage in the business of guaranteeing payment of the
6 principal or the interest of bonds or mortgages.

7 3. (1) Notwithstanding subsection 1 of this section or anything else to the contrary in
8 sections 381.011 to 381.405, a title insurer is expressly authorized to issue closing or settlement
9 protection letters (and to collect a fee for such issuance) in all transactions where its title
10 insurance policies are issued and where its issuing agent or agency is performing settlement

11 services and shall do so in favor of [and upon request by] the applicable buyer, lender, or seller
12 in [such transaction] **all residential real estate transactions**. Such closing or settlement
13 protection letter form shall be filed with the director under section 381.085 and shall conform
14 to the terms of coverage and form of instrument as required by rule of the director and shall
15 indemnify a buyer, lender, or seller solely against losses not to exceed the amount of the
16 settlement funds only because of the following acts of the title insurer's named issuing title
17 agency or title agent:

18 (a) Acts of theft of settlement funds or fraud with regard to settlement funds; and

19 (b) Failure to comply with written closing instructions by the proposed insured when
20 agreed to by the title agency or title agent relating to title insurance coverage.

21 (2) The rate for issuance of a closing or settlement protection letter in a residential real
22 estate transaction indemnifying a lessee or purchaser of an interest in land, a borrower, or a
23 lender secured by a mortgage, including any other security instrument, of an interest in land shall
24 be filed as a rate with the director.

25 (3) The rate for issuance of a closing or settlement protection letter in a residential real
26 estate transaction indemnifying a seller of an interest in land shall be filed as a separate rate with
27 the director.

28 (4) Such filed rate shall not be excessive or inadequate. The entire rate for the closing
29 or settlement protection letter shall be retained by the title insurer.

30 (5) Except as provided under this section or section 381.403, a title insurer shall not
31 provide any other coverage which purports to indemnify against improper acts or omissions of
32 a person with regard to escrow, settlement, or closing services.

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