

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1040**  
**98TH GENERAL ASSEMBLY**

2184H.02C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 381.022, 381.058, and 456.950, RSMo, and to enact in lieu thereof four new sections relating to titles to property.

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

Section A. Sections 381.022, 381.058, and 456.950, RSMo, are repealed and four new  
2 sections enacted in lieu thereof, to be known as sections 381.022, 381.058, 456.950, and 456.1-  
3 113, to read as follows:

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

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

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

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

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

11 (c) Insured by the appropriate federal entity; and

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

13 (3) "Security" or "security deposit", funds or other property received by the title insurer  
14 as collateral to secure an indemnitor's obligation under an indemnity agreement under which the  
15 insurer is granted a perfected security interest in the collateral in exchange for agreeing to  
16 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.

456.950. 1. As used in this section, "qualified spousal trust" means a trust:

2 (1) The settlors of which are [husband and wife] **married to each other** at the time of  
3 the creation of the trust; and

4 (2) The terms of which provide that during the joint lives of the settlors all property [or  
5 interests in property] transferred to, or held by, the trustee are:

6 (a) Held and administered in one trust for the benefit of both settlors, revocable by either  
7 **settlor** or both settlors [acting together] while either or both are alive, and each settlor having  
8 the right to receive distributions of income or principal, whether mandatory or within the  
9 discretion of the trustee, from the entire trust for the joint lives of the settlors and for the  
10 survivor's life; or

11 (b) Held and administered in two separate shares of one trust for the benefit of each of  
12 the settlors, with the trust revocable by each settlor with respect to that settlor's separate share  
13 of that trust without the participation or consent of the other settlor, and each settlor having the

14 right to receive distributions of income or principal, whether mandatory or within the discretion  
15 of the trustee, from that settlor's separate share for that settlor's life; or

16 (c) Held and administered under the terms and conditions contained in paragraphs (a)  
17 and (b) of this subdivision.

18 2. A qualified spousal trust may contain any other trust terms that are not inconsistent  
19 with the provisions of this section, **including, without limitation, a discretionary power to**  
20 **distribute trust property to a person in addition to a settlor.**

21 3. [Any property or interests in property that are at any time transferred to the trustee of  
22 a qualified spousal trust of which the husband and wife are the settlors, shall thereafter be  
23 administered as provided by the trust terms in accordance with paragraph (a), (b), or (c) of  
24 subdivision (2) of subsection 1 of this section. All trust property and interests in property that  
25 is deemed for purposes of this section to be held as tenants by the entirety, including the proceeds  
26 thereof, the income thereon, and any property into which such property, proceeds, or income may  
27 be converted, shall have the same immunity from the claims of the separate creditors of the  
28 settlors as would have existed if the settlors had continued to hold that property as husband and  
29 wife as tenants by the entirety. Property or interests in property held by a husband and wife as  
30 tenants by the entirety or as joint tenants or other form of joint ownership with right of  
31 survivorship shall be conclusively deemed for purposes of this section to be held as tenants by  
32 the entirety upon its transfer to the qualified spousal trust. All such transfers shall retain said  
33 immunity, so long as:

34 (1) Both settlors are alive and remain married; and

35 (2) The property, proceeds, or income continue to be held in trust by the trustee of the  
36 qualified spousal trust] **All property at any time held in a qualified spousal trust, without**  
37 **regard to how such property was titled prior to it being so held, shall have the same**  
38 **immunity from the claims of a separate creditor of either settlor as if such property were**  
39 **held outside the trust by the settlors as tenants by the entirety, unless otherwise provided**  
40 **in writing by the settlor or settlors who transferred such property to the trust, and such**  
41 **property shall be treated for that purpose, including without limitation, federal and state**  
42 **bankruptcy laws, as tenants by the entirety property. Property held in a qualified spousal**  
43 **trust shall cease to receive immunity from the claims of creditors upon the dissolution of**  
44 **marriage of the settlors by a court.**

45 4. [Property or interests in property held by a husband and wife or held in the sole name  
46 of a husband or wife that are not held as tenants by the entirety or deemed held as tenants by the  
47 entirety for purposes of this section and are transferred to a qualified spousal trust shall be held  
48 as directed in the qualified spousal trust's governing instrument or in the instrument of transfer  
49 and the rights of any claimant to any interest in that property shall not be affected by this section]

50 **As used in this section, "property" means any interest in any type of property held in a**  
51 **qualified spousal trust, the income thereon, and any property into which such interest,**  
52 **proceeds, or income may be converted.**

53         5. Upon the death of each settlor, all property [and interests in property] held by the  
54 trustee of the qualified spousal trust shall be distributed as directed by the then current terms of  
55 the governing instrument of such trust. Upon the death of the first settlor to die, if immediately  
56 prior to death the predeceased settlor's interest in the qualified spousal trust was then held in such  
57 settlor's separate share, the property [or interests in property] **held** in such settlor's separate share  
58 may pass into an irrevocable trust for the benefit of the surviving settlor upon such terms as the  
59 governing instrument shall direct, including without limitation a spendthrift provision as  
60 provided in section 456.5-502.

61         6. **The respective rights of settlors who are married to each other in any property**  
62 **for purposes of a dissolution of the settlors' marriage shall not be affected or changed by**  
63 **reason of the transfer of that property to, or its subsequent administration as an asset of,**  
64 **a qualified spousal trust during the marriage of the settlors, unless both settlors expressly**  
65 **agree otherwise in writing.**

66         7. No transfer [by a husband and wife as settlors] to a qualified spousal trust shall [affect  
67 or change either settlor's marital property rights to the transferred property or interest therein  
68 immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless  
69 both spouses otherwise expressly agree in writing] **avoid or defeat the Missouri uniform**  
70 **transfer act in chapter 428.**

71         [7.] **8.** This section shall apply to all trusts which fulfill the criteria set forth in this  
72 section for a qualified spousal trust regardless of whether such trust was created before, **on**, or  
73 after August 28, 2011.

**456.1-113. Any transfer of an asset to a trustee of a trust, to such trust itself, or to**  
2 **a share of such trust, in a manner that is reasonably calculated to identify such trust or**  
3 **that share of such trust, subjects that asset to the terms of such trust or that share.**

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