

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 634

97TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 3, 2014, with recommendation that the Senate Committee Substitute do pass.

4746S.02C

TERRY L. SPIELER, Secretary.

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Section A. Sections 381.022 and 381.058, RSMo, are repealed and two new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

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

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

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

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

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

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

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 for a specific title exception to coverage.

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

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

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

38 3. It is unlawful for any person to:

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

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

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

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

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

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

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

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

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

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

78 6. It is unlawful for any **title insurer**, title agency or agent to engage in
79 the handling of an escrow, settlement or closing of a residential real estate
80 transaction unless the escrow handling, settlement or closing is conducted or
81 performed in contemplation of and in conjunction with the issuance of a title
82 insurance policy [or] **and** a closing protection letter, or **if a title insurance**
83 **policy is not being issued by the title insurer, title agency, or title**
84 **agent**, prior to the receipt of any funds, the **title insurer**, title agency, or **title**
85 agent clearly discloses to the seller, buyer or lender involved in such escrow,
86 settlement or closing, that no title insurer is providing any protection for closing
87 or settlement funds received by the title agency or agent.

88 7. A violation of any provision under this section is a level three violation
89 under section 374.049.

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

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

8 3. (1) Notwithstanding subsection 1 of this section or anything else to the
9 contrary in sections 381.011 to 381.405, a title insurer is expressly authorized to
10 issue closing or settlement protection letters (and to collect a fee for such
11 issuance) in all transactions where its title insurance policies are issued and
12 where its issuing agent or agency is performing settlement services and shall do
13 so in favor of [and upon request by] the applicable buyer, lender, or seller in
14 [such transaction] **all residential real estate transactions**. Such closing or
15 settlement protection letter form shall be filed with the director under section
16 381.085 and shall conform to the terms of coverage and form of instrument as
17 required by rule of the director and shall indemnify a buyer, lender, or seller
18 solely against losses not to exceed the amount of the settlement funds only
19 because of the following acts of the title insurer's named issuing title agency or
20 title agent:

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

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

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

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

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

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

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