

FIRST REGULAR SESSION

SENATE BILL NO. 443

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TAYLOR.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

0257S.03I

AN ACT

To repeal sections 381.058, 381.410, and 381.412, RSMo, and to enact in lieu thereof four new sections relating to title insurance.

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

Section A. Sections 381.058, 381.410, and 381.412, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 381.019, 381.058, 381.410, and 381.412, to read as follows:

381.019. 1. A title agency shall not commingle or otherwise combine operating funds, escrow funds, premium funds, or other funds held by the title agency in any other capacity. All escrow funds received by a title agency shall be deposited in a separate fiduciary trust account in a qualified depository institution no later than the close of the next business day after receipt.

2. Each violation of this section shall constitute a class C violation as that term is defined in section 381.045.

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

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

3. (1) Notwithstanding subsection 1 of this section, and to the extent such coverage is lawful within this state, a title insurer [is expressly authorized to] **shall** issue closing or settlement protection to a proposed insured [upon request] if the title insurer issues a commitment, binder or title insurance policy. Such closing or settlement protection shall

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

conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title agency or title agent:

(a) Theft of settlement funds; and
(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The director [may] **shall** promulgate or approve a required charge for providing the coverage.

(3) A title insurer, **title agency, or title agent** shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

381.410. As used in this section and section 381.412, the following [terms] **shall** mean:

(1) ["Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", United States currency, funds conveyed by [a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or] wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(2) **"Collected", funds from any source that have cleared the financial institution from which they have been drawn and are available for disbursement by a title insurer or title insurance agency;**

(3) "Director", the director of the department of insurance, unless the settlement agent's primary regulator is another division in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over this section and section 381.412;

(4) "Financial institution":

(a) A person or entity doing business pursuant to the laws of this state or the United States relating to banks, trust companies, savings and loan associations or credit unions; or

(b) The following persons or entities if their principal place of business is in Missouri or outside Missouri, but within the St. Louis or Kansas City standard metropolitan statistical area:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a

successor of any of the foregoing agencies or entities, as an approved seller or servicer;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar, or a person licensed under chapter 339, RSMo.

381.412. 1. A settlement agent who accepts funds of more than [ten thousand] **two thousand five hundred** dollars for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri; **however, any check involved in a closing in which the buyer and seller use the services of two different title insurers or title insurance agencies shall be disbursed upon closing if the funds are collected at the time of disbursement. If the funds represented by the check are not collected by the disbursing agency, such funds shall be disbursed when the funds are collected. Funds wired by the title insurer or the title agency on or before 2:00 p.m. on the day of the closing shall be disbursed.**

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.009, shall make any payment, disbursement or withdrawal in excess of [ten] **two thousand five hundred** dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) [At least ten days prior to such payment, disbursement or withdrawal;

(2)] Which consisted of certified funds; or

[3] **(2)** Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute

a separate violation. In determining a fine, the director shall consider the extent to which the violation was a knowing and willful violation, the corrective action taken by the settlement agent to ensure that the violation will not be repeated, and the record of the settlement agent in complying with the provisions of this section.

T

Unofficial

Bill

Copy