

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 2257

98TH GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industry, April 21, 2016, with recommendation that the Senate Committee Substitute do pass.

5419S.05C

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal sections 381.022, 381.058, 486.245, 486.275, 486.285, 486.375, and 513.430, RSMo, and to enact in lieu thereof seven new sections relating to transactions involving real property, with penalty provisions.

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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Section A. Sections 381.022, 381.058, 486.245, 486.275, 486.285, 486.375, 2 and 513.430, RSMo, are repealed and seven new sections enacted in lieu thereof, 3 to be known as sections 381.022, 381.058, 486.245, 486.275, 486.285, 486.375, and 4 513.430, to read as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

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

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  
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 **title** agent to  
79 engage in the handling of an escrow, settlement or closing of a residential real  
80 estate transaction unless the escrow handling, settlement or closing is conducted  
81 or 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.

486.245. 1. The county clerk shall keep a register, listing the name and  
2 address of each person to whom he **or she** awards a notary commission and the  
3 date upon which he **or she** awards the commission. Within thirty days after  
4 receiving a bond, signature and oath, the county clerk shall forward the bond,  
5 signature and oath to the secretary of state by certified mail. All such bonds,  
6 signatures and oaths shall be preserved permanently by the secretary of state.

7 **2. The secretary of state shall maintain a database that includes**  
8 **but is not limited to information that is contained on each notary's seal**  
9 **or any lost seal of a notary public.**

486.275. 1. At the time of notarization a notary public shall sign his **or**  
2 **her** official signature on each notary certificate.

3 **2. If a signature or record is required to be notarized,**  
4 **acknowledged, verified, or made under oath, the requirement is**  
5 **satisfied if the electronic signature of the person authorized to perform**  
6 **such acts, together with all other information required to be included,**  
7 **is attached to or logically associated with the signature or record.**

8 **3. The secretary of state shall promulgate rules to implement the**  
9 **provisions of this section. Any rule or portion of a rule, as that term is**  
10 **defined in section 536.010 that is created under the authority delegated**  
11 **in this section shall become effective only if it complies with and is**  
12 **subject to all of the provisions of chapter 536, and, if applicable, section**  
13 **536.028. This section and chapter 536 are nonseverable and if any of**  
14 **the powers vested with the general assembly pursuant to chapter 536,**  
15 **to review, to delay the effective date, or to disapprove and annul a rule**  
16 **are subsequently held unconstitutional, then the grant of rulemaking**  
17 **authority and any rule proposed or adopted after August 28, 2016, shall**  
18 **be invalid and void.**

486.285. 1. **(1) A manufacturer of a notary public's seal shall**  
2 **register with the secretary of state and communicate to the secretary**  
3 **of state when it has issued a seal to a person in this state. After such**

4 **communication, the secretary of state shall approve any seal issued by**  
5 **the manufacturer within ten days.**

6 **(2) A copy of the notary's commission shall be maintained by**  
7 **such manufacturer.**

8 **(3) If a manufacturer violates the provisions of this subsection,**  
9 **the manufacturer shall be subject to a one thousand dollar fine for each**  
10 **violation.**

11 **2.** Each notary public shall provide, keep, and use a seal which is either  
12 an engraved embosser seal or a black inked rubber stamp seal to be used on the  
13 document being notarized. The seal shall contain the notary's name exactly as  
14 indicated on the commission and the words "Notary Seal", "Notary Public", and  
15 "State of Missouri" and, after August 28, 2004, the commission number assigned  
16 by the secretary of state, provided that the notary public has been issued a  
17 commission number by the secretary of state, all of which shall be in print not  
18 smaller than eight-point type.

19 **[2.] 3.** The indentations made by the seal embosser or printed by the  
20 black inked rubber stamp seal shall not be applied on the notarial certificate or  
21 document to be notarized in a manner that will render illegible or incapable of  
22 photographic reproduction any of the printed marks or writing on the certificate  
23 or document.

24 **[3.] 4.** Every notary shall keep an official notarial seal that is the  
25 exclusive property of the notary and the seal may not be used by any other person  
26 or surrendered to an employer upon termination of employment.

486.375. Any person who acts as, or otherwise willfully impersonates, a  
2 notary public while not lawfully appointed and commissioned to perform notarial  
3 acts is guilty of a [misdemeanor and punishable upon conviction by a fine not  
4 exceeding five hundred dollars or by imprisonment for not more than six months  
5 or both] **class D felony.**

513.430. 1. The following property shall be exempt from attachment and  
2 execution to the extent of any person's interest therein:

3 (1) Household furnishings, household goods, wearing apparel, appliances,  
4 books, animals, crops or musical instruments that are held primarily for personal,  
5 family or household use of such person or a dependent of such person, not to  
6 exceed three thousand dollars in value in the aggregate;

7 (2) A wedding ring not to exceed one thousand five hundred dollars in  
8 value and other jewelry held primarily for the personal, family or household use

9 of such person or a dependent of such person, not to exceed five hundred dollars  
10 in value in the aggregate;

11 (3) Any other property of any kind, not to exceed in value six hundred  
12 dollars in the aggregate;

13 (4) Any implements or professional books or tools of the trade of such  
14 person or the trade of a dependent of such person not to exceed three thousand  
15 dollars in value in the aggregate;

16 (5) Any motor vehicles, not to exceed three thousand dollars in value in  
17 the aggregate;

18 (6) Any mobile home used as the principal residence but not attached to  
19 real property in which the debtor has a fee interest, not to exceed five thousand  
20 dollars in value;

21 (7) Any one or more unmatured life insurance contracts owned by such  
22 person, other than a credit life insurance contract, and up to fifteen thousand  
23 dollars of any matured life insurance proceeds for actual funeral, cremation, or  
24 burial expenses where the deceased is the spouse, child, or parent of the  
25 beneficiary;

26 (8) The amount of any accrued dividend or interest under, or loan value  
27 of, any one or more unmatured life insurance contracts owned by such person  
28 under which the insured is such person or an individual of whom such person is  
29 a dependent; provided, however, that if proceedings under Title 11 of the United  
30 States Code are commenced by or against such person, the amount exempt in  
31 such proceedings shall not exceed in value one hundred fifty thousand dollars in  
32 the aggregate less any amount of property of such person transferred by the life  
33 insurance company or fraternal benefit society to itself in good faith if such  
34 transfer is to pay a premium or to carry out a nonforfeiture insurance option and  
35 is required to be so transferred automatically under a life insurance contract with  
36 such company or society that was entered into before commencement of such  
37 proceedings. No amount of any accrued dividend or interest under, or loan value  
38 of, any such life insurance contracts shall be exempt from any claim for child  
39 support. Notwithstanding anything to the contrary, no such amount shall be  
40 exempt in such proceedings under any such insurance contract which was  
41 purchased by such person within one year prior to the commencement of such  
42 proceedings;

43 (9) Professionally prescribed health aids for such person or a dependent  
44 of such person;

45 (10) Such person's right to receive:

46 (a) A Social Security benefit, unemployment compensation or a public  
47 assistance benefit;

48 (b) A veteran's benefit;

49 (c) A disability, illness or unemployment benefit;

50 (d) Alimony, support or separate maintenance, not to exceed seven  
51 hundred fifty dollars a month;

52 (e) Any payment under a stock bonus plan, pension plan, disability or  
53 death benefit plan, profit-sharing plan, nonpublic retirement plan or any plan  
54 described, defined, or established pursuant to section 456.014, the person's right  
55 to a participant account in any deferred compensation program offered by the  
56 state of Missouri or any of its political subdivisions, or annuity or similar plan or  
57 contract on account of illness, disability, death, age or length of service, to the  
58 extent reasonably necessary for the support of such person and any dependent of  
59 such person unless:

60 a. Such plan or contract was established by or under the auspices of an  
61 insider that employed such person at the time such person's rights under such  
62 plan or contract arose;

63 b. Such payment is on account of age or length of service; and

64 c. Such plan or contract does not qualify under Section 401(a), 403(a),  
65 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, (26  
66 U.S.C. Section 401(a), 403(a), 403(b), 408, 408A or 409);

67 except that any such payment to any person shall be subject to attachment or  
68 execution pursuant to a qualified domestic relations order, as defined by Section  
69 414(p) of the Internal Revenue Code of 1986, as amended, issued by a court in  
70 any proceeding for dissolution of marriage or legal separation or a proceeding for  
71 disposition of property following dissolution of marriage by a court which lacked  
72 personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of  
73 marital property at the time of the original judgment of dissolution;

74 (f) Any money or assets, payable to a participant or beneficiary from, or  
75 any interest of any participant or beneficiary in, a retirement plan, profit-sharing  
76 plan, health savings plan, or similar plan, including an inherited account or plan,  
77 that is qualified under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the  
78 Internal Revenue Code of 1986, as amended, whether such participant's or  
79 beneficiary's interest arises by inheritance, designation, appointment, or  
80 otherwise, except as provided in this paragraph. Any plan or arrangement



81 described in this paragraph shall not be exempt from the claim of an alternate  
82 payee under a qualified domestic relations order; however, the interest of any and  
83 all alternate payees under a qualified domestic relations order shall be exempt  
84 from any and all claims of any creditor, other than the state of Missouri through  
85 its department of social services. As used in this paragraph, the terms "alternate  
86 payee" and "qualified domestic relations order" have the meaning given to them  
87 in Section 414(p) of the Internal Revenue Code of 1986, as amended. If  
88 proceedings under Title 11 of the United States Code are commenced by or  
89 against such person, no amount of funds shall be exempt in such proceedings  
90 under any such plan, contract, or trust which is fraudulent as defined in  
91 subsection 2 of section 428.024 and for the period such person participated within  
92 three years prior to the commencement of such proceedings. For the purposes of  
93 this section, when the fraudulently conveyed funds are recovered and after, such  
94 funds shall be deducted and then treated as though the funds had never been  
95 contributed to the plan, contract, or trust;

96 (11) The debtor's right to receive, or property that is traceable to, a  
97 payment on account of the wrongful death of an individual of whom the debtor  
98 was a dependent, to the extent reasonably necessary for the support of the debtor  
99 and any dependent of the debtor;

100 **(12) Any money held by a debtor as a security deposit for**  
101 **property that has been rented by another individual. Such money held**  
102 **as a security deposit shall be returned to the renter in accordance with**  
103 **subdivision (1) of subsection 2 of section 535.300.**

104 2. Nothing in this section shall be interpreted to exempt from attachment  
105 or execution for a valid judicial or administrative order for the payment of child  
106 support or maintenance any money or assets, payable to a participant or  
107 beneficiary from, or any interest of any participant or beneficiary in, a retirement  
108 plan which is qualified pursuant to Section 408A of the Internal Revenue Code  
109 of 1986, as amended.

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