

As Amended by Senate Committee

Session of 2024

HOUSE BILL No. 2663

By Committee on Insurance

Requested by Sean Miller on behalf of the Kansas Land Title Association

2-1

1 AN ACT concerning insurance; relating to title insurance; allowing title
2 insurance agents to submit escrow, settlement and closing funds
3 through certain real-time or instant payment systems; amending K.S.A.
4 40-1137 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 40-1137 is hereby amended to read as follows: 40-
8 1137. A title insurance agent may operate as an escrow, settlement or
9 closing agent, provided that:

10 (a) All funds deposited with the title insurance agent in connection
11 with an escrow, settlement or closing shall be submitted for collection to,
12 invested in or deposited in a separate fiduciary trust account or accounts in
13 a qualified financial institution no later than the close of the next business
14 day, in accordance with the following requirements:

15 (1) The funds shall be the property of the person or persons entitled to
16 them under the provisions of the escrow, settlement or closing agreement
17 and shall be segregated for each depository by escrow, settlement or
18 closing in the records of the title insurance agent in a manner that permits
19 the funds to be identified on an individual basis;

20 (2) the funds shall be applied only in accordance with the terms of the
21 individual instructions or agreements under which the funds were
22 accepted; and

23 (3) an agent shall not retain any interest on any money held in an
24 interest-bearing account without the written consent of all parties to the
25 transaction.

26 (b) Funds held in an escrow account shall be disbursed only:

27 (1) Pursuant to written authorization of buyer and seller;

28 (2) pursuant to a court order; or

29 (3) when a transaction is closed according to the agreement of the
30 parties.

31 (c) A title insurance agent shall not commingle the agent's personal
32 funds or other moneys with escrow funds. In addition, the agent shall not
33 use escrow funds to pay or to indemnify against the debts of the agent or
34 of any other party. The escrow funds shall be used only to fulfill the terms
35 of the individual escrow and none of the funds shall be utilized until the

1 necessary conditions of the escrow have been met. All funds deposited for
2 real estate closings, including closings involving refinances of existing
3 mortgage loans, which exceed \$2,500 shall be in one of the following
4 forms:

5 (1) Lawful money of the United States;

6 (2) wire transfers such that the funds are unconditionally received by
7 the title insurance agent or the agent's depository;

8 (3) cashier's checks, certified checks, teller's checks or bank money
9 orders issued by a federally insured financial institution and
10 unconditionally held by the title insurance agent;

11 (4) funds received from governmental entities, federally chartered
12 instrumentalities of the United States or drawn on an escrow account of a
13 real estate broker licensed in the state or drawn on an escrow account of a
14 title insurer or title insurance agent licensed to do business in the state; ~~or~~

15 (5) other negotiable instruments ~~which~~ *that* have been on deposit in
16 the escrow account at least 10 days; *or*

17 (6) *a real-time or instant payment through the FedNow service*
18 *operated by the federal reserve banks or the clearing house payment*
19 *company's real-time payments (RTP) system.*

20 (d) Each title insurance agent shall have an annual audit made of its
21 escrow, settlement and closing deposit accounts, conducted by a certified
22 public accountant or by a title insurer for which the title insurance agent
23 has a licensing agreement. The title insurance agent shall provide a copy of
24 the audit report to the commissioner within 30 days after the close of the
25 calendar year for which an audit is required. Title insurance agents who are
26 attorneys and who issue title insurance policies as part of their legal
27 representation of clients are exempt from the requirements of this
28 subsection. However, the title insurer, at its expense, may conduct or cause
29 to be conducted an annual audit of the escrow, settlement and closing
30 accounts of the attorney. Attorneys who are exclusively in the business of
31 title insurance are not exempt from the requirements of this subsection.

32 (e) The commissioner may promulgate rules and regulations setting
33 forth the standards of the audit and the form of audit report required.

34 (f) If the title insurance agent is appointed by two or more title
35 insurers and maintains fiduciary trust accounts in connection with
36 providing escrow and closing settlement services, the title insurance agent
37 shall allow each title insurer reasonable access to the accounts and any or
38 all of the supporting account information in order to ascertain the safety
39 and security of the funds held by the title insurance agent.

40 (g) Nothing in this section is intended to amend, alter or supersede
41 other laws of this state or the United States, regarding an escrow holder's
42 duties and obligations.

43 Sec. 2. K.S.A. 40-1137 is hereby repealed.

1 Sec. 3. This act shall take effect and be in force from and after its
2 publication in the ~~statute book~~ ***Kansas register***.