

HOUSE BILL No. 2085

By Committee on Insurance

1-25

1 AN ACT relating to insurance; concerning title insurance; amending
2 K.S.A. 2010 Supp. 40-1137 and repealing the existing section.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2010 Supp. 40-1137 is hereby amended to read as
6 follows: 40-1137. A title insurance agent may operate as an escrow,
7 settlement or closing agent, provided that:

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

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

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

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

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

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

26 (2) pursuant to a court order; or

27 (3) when a transaction is closed according to the agreement of the
28 parties.

29 (c) A title insurance agent shall not commingle the agent's personal
30 funds or other moneys with escrow funds. In addition, the agent shall not
31 use escrow funds to pay or to indemnify against the debts of the agent or
32 of any other party. The escrow funds shall be used only to fulfill the terms
33 of the individual escrow and none of the funds shall be utilized until the
34 necessary conditions of the escrow have been met. All funds deposited
35 for real estate closings, including closings involving refinances of
36 existing mortgage loans, which exceed \$2,500 shall be in one of the

1 following forms:

2 (1) Lawful money of the United States;

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

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

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

12 (5) other negotiable instruments which have been on deposit in the
13 escrow account at least 10 days.

14 (d) Each title insurance agent shall have an annual audit made of its
15 escrow, settlement and closing deposit accounts, conducted by a certified
16 public accountant or by a title insurer for which the title insurance agent
17 has a licensing agreement. *Each title company owned in full or in part by*
18 *a title insurer shall have an annual audit made of its escrow, settlement*
19 *and closing deposit accounts, conducted by a certified public accountant.*
20 *The title insurer or certified public accountant shall provide the title*
21 *insurance agent or title company a copy of the audit report within 10*
22 *days following an annual audit.* The title insurance agent or title
23 company shall provide a copy of the audit report to the commissioner
24 within 30 days after the close of ~~the each~~ calendar year ~~for which an audit~~
25 ~~is required~~. Title insurance agents who are attorneys and who issue title
26 insurance policies as part of their legal representation of clients are
27 exempt from the requirements of this subsection. However, the title
28 insurer, at its expense, may conduct or cause to be conducted an annual
29 audit of the escrow, settlement and closing accounts of the attorney.
30 Attorneys who are exclusively in the business of title insurance are not
31 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. 2010 Supp. 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.
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