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**HOUSE BILL No. 2934**

By Representatives DiVita, Huff, Merrick, Miller, T. Powell, Toplikar  
and D. Williams

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10 AN ACT concerning title insurance companies; amending K.S.A. 40-  
11 1137 and repealing the existing section.

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

14 Section 1. K.S.A. 40-1137 is hereby amended to read as follows: 40-  
15 1137. A title insurance agent may operate as an escrow, *refinancing*, set-  
16 tlement or closing agent, provided that:

17 (a) All funds deposited with the title insurance agent in connection  
18 with an escrow, *refinancing*, settlement or closing shall be submitted for  
19 collection to, invested in or deposited in a separate fiduciary trust account  
20 or accounts in a qualified financial institution no later than the close of  
21 the next business day, in accordance with the following requirements:

22 (1) The funds shall be the property of the person or persons entitled  
23 to them under the provisions of the escrow, *refinancing*, settlement or  
24 closing agreement and shall be segregated for each depository by escrow,  
25 *refinancing*, settlement or closing in the records of the title insurance  
26 agent in a manner that permits the funds to be identified on an individual  
27 basis;

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

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

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

35 (1) Pursuant to written authorization of buyer and seller;  
36 (2) pursuant to a court order; or  
37 (3) when a transaction is closed according to the agreement of the  
38 parties.

39 (c) A title insurance agent shall not commingle the agent's personal  
40 funds or other moneys with escrow funds. In addition, the agent shall not  
41 use escrow funds to pay or to indemnify against the debts of the agent or  
42 of any other party. The escrow funds shall be used only to fulfill the terms  
43 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  
2 for 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 uncondition-  
10 ally 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  
13 a real estate broker licensed in the state or drawn on an escrow account  
14 of a title insurer or title insurance agent licensed to do business in the  
15 state; or

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

18 (d) Each title insurance agent shall have an audit made of its escrow,  
19 settlement and closing deposit accounts, conducted by a certified public  
20 accountant or by a title insurer for which the title insurance agent has a  
21 licensing agreement, according to the following schedule. Audits shall be  
22 considered current if dated within the 12 months prior to submission of  
23 the audit as required herein. The title insurance agent shall provide a  
24 copy of the audit report to the commissioner and to each title insurance  
25 company which it represents within 160 days after the close of the cal-  
26 endar year for which an audit is required. Title insurance agents who are  
27 attorneys and who issue title insurance policies as part of their legal rep-  
28 resentation of clients are exempt from the requirements of this subsection.  
29 However, the title insurer, at its expense, may conduct or cause to  
30 be conducted an annual audit of the escrow, settlement and closing ac-  
31 counts of the attorney. Attorneys who are exclusively in the business of  
32 title insurance are not exempt from the requirements of this subsection.  
33 Audits shall be required as follows:

34 (1) Annual audit required in counties having a population of 40,001  
35 and over;

36 (2) biennial audit required in counties having a population of 20,001  
37 - 40,000; and

38 (3) triennial audit required in counties having a population of 20,000  
39 or under.

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

42 (f) If the title insurance agent is appointed by two or more title in-  
43 surers and maintains fiduciary trust accounts in connection with providing

1 escrow and closing settlement services, the title insurance agent shall  
2 allow each title insurer reasonable access to the accounts and any or all  
3 of the supporting account information in order to ascertain the safety and  
4 security of the funds held by the title insurance agent.

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

8 (h) (1) *Any title insurance agent who refuses or neglects to disburse*  
9 *funds to creditors or lien holders of the parties or any other person, as*  
10 *required by the subsection (b), within 20 calendar days after receiving a*  
11 *demand therefor, shall be liable in damages to the person for whom the*  
12 *demand is made in the sum of \$500, together with a reasonable attorney's*  
13 *fee for preparing and prosecuting the action. The plaintiff in such action*  
14 *may recover any additional damages that the evidence in the case war-*  
15 *rants. A civil action may be brought under this act before any court of*  
16 *competent jurisdiction, and attachments may be had as in other cases.*

17 (2) *Any remedy provided by this subsection shall be in addition to*  
18 *any penalties assessed by the commissioner pursuant to K.S.A. 40-1141,*  
19 *and amendments thereto.*

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

21 Sec. 3. This act shall take effect and be in force from and after its  
22 publication in the statute book.

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