

Approved: February 1, 1999
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on January 28, 1999 in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research
Ken Wilke, Office of Revisor
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Roy Worthington, Land Title Association, Manhattan
Karen France, Kansas Association of Realtors
Jean Duncan, Real Estate Commission
Linda DeCoursey, Kansas Insurance Department
Marty Hazen, Kansas Insurance Department

Others attending: See Attached

Hearing on SB 60 - Title insurance and escrow accounts

Senator Feleciano stated this proposed legislation would strengthen the Kansas Insurance Department's position in regulating title insurance. He related the tragedy of 700 creditors who lost \$1.3 million when the principal of a title company in Wichita absconded with the funds which had been placed in escrow. Escrow accounts are to be deposited in the bank with no co-mingling of funds and only those actual closing expenses are to be paid from that account. If interest is paid on such funds, the escrow agent should receive permission from the client to collect such interest. Currently there is no oversight of title companies.

Roy Worthington, Kansas Land Title Association, informed the Committee that the stealing of such funds is a very rare occasion (Attachment 1). The majority of these title companies are small businesses. He suggested a four-tier audit but they could live with a three-tier. Abstractors are required to have a \$25,000 bond as well as most carry an errors and omission bond. Fidelity bonds usually cover employees but not the owner or principal of the business. He recommended a "good funds provision" be added to the proposed legislation due to the great increase in mortgage bankers especially those from out-of-state. Such "good funds" legislation would level the playing field and offer assurance of consumer protection. This would also address the fiduciary responsibility of mortgage bankers who sometimes write mortgages for property valuations which are 125-135% greater than the appraised value. Many mortgage bankers do not require appraisals.

Karen France, Kansas Realtors Association, suggested a pool which would be self-funded and administered by Kansas Insurance Department (Attachment 2). She did acknowledge it would be difficult to manage in an industry this size. In response to questions regarding closing, she replied that the requirement of holding personal checks for 10 days was too long in the real estate field. She suggested the use of electronic filing or cashier checks.

Marty Hazen, Kansas Insurance Department, said they currently have no jurisdiction over the escrow and closing aspects of many title insurance companies.

Jean Duncan, Kansas Real Estate Commission, presented testimony in support of the proposed legislation (Attachment 3).

Linda DeCoursey, Kansas Insurance Department, praised the requirement of audits for title agents as being good business practices and a quality assurance for customers (Attachment 4). The Insurance Commissioner would agree with an amendment which would include a bond requirement for title insurance agents. She presented an amendment which would use the term "title insurance agent" throughout the bill.

During Committee discussion regarding bonding requirements, it was suggested that the bonds be increased

CONTINUATION SHEET

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

to \$100,000 due to the real estate market at this time. It was suggested that "good funds" legislation not be included in this bill as it really falls under the auspice of the Bank Commissioner. There are 145 title agents in Kansas and bonding in the amount of \$100,000 is not easily obtained and it may be quite expensive for very small title companies. It was suggested that a staggering bond requirement based upon volume of business be included in the bill. Bonding costs would be ultimately transferred to the consumer by charging higher fees.

Erik Satorious, Johnson County Board of Realtors, Inc., supported the bill and informed the Committee of the Real Estate Recovery Revolving Fund in the amount of \$275,000 (Attachment 5). It is limited to \$15,000 per claimant. It was suggested that the Revolving Fund grants be increased to the amount of the average cost home in the area.

Chairman Steffes closed the hearing.

Senator Barone moved for the introduction of legislation which would require anti discriminatory treatment by insurance companies for coverage of schizophrenia, bi-polar disorder, obsessive compulsive behavior disorder, panic disorder, and pervasive developmental disorder. First dollar coverage would be forfeited and these brain diseases would be treated as any other disease covered by the insurance policy. Motion was seconded by Senator Biggs. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting will be held on Monday, February 1.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE GUEST LIST

DATE: 1/28/99

NAME	REPRESENTING
Tom Gaches	McGill, Gaches & Asso.
Ellen Pule Allowing	Assoc. of CMHCs
George Barber	Barber & Assoc.
Chuck Stokes	KBA
Pat Morris	K.A.I.A.
Lori Callahan	Kammco
Erik Sartorius	Johnson Co. Board of Realtors
Jean Duncan	KREC
John Petersa	Kc Land Title Assn
Ron Smith	Ks Bar Assoc
Roy Worthington	KANSAS LAND TITLE
John Dozier	Kansas Land Title Assn
MARTY HAZEN	KANSAS INSURANCE DEPT.
Sandra DeCoursey	KS Insurance Dept.
Karen Franc	Ks. Assn of REALTORS

PRESENTATION TO SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

RE: Senate Bill 60 - An Act concerning title insurance and escrow accounts.

DATE: January 28, 1999

FROM: Kansas Land Title Association
Roy H. Worthington, Legislative Chairman

The Kansas Land Title Association supports Senate Bill 60 as a means toward protecting the consumer from defalcations by title insurance agents engaged in settlement and closing of real estate transactions.

It is recommended that a "good funds provision" be added to the bill which will further protect the consumer from defalcations by mortgage brokers and providers of mortgage loan funds - see attachment.

The provisions of Senate Bill 60 will cause title insurance agents to incur additional costs in the form of escrow account audits and will cause the Department of Insurance additional supervisory duties, with both burdens seeking to protect the consumer.

The members of the Kansas Land Title Association are willing to accept the additional burdens imposed by ~~House~~ *Senate* Bill ~~2966~~ *60* in order to protect the consumer.

Senate The Kansas Land Title Association believes that the provisions of ~~House~~ Bill ~~2966~~ *60* with an added "good funds provision" will help prevent title company defalcations in the future.

Respectfully submitted

by, *Roy Worthington*

Roy H. Worthington
Legislative Chairman
Kansas Land Title Assn.

Senate Financial Institutions & Insurance

Date *1/28/99*

Attachment # *1*

THE NEED FOR GOOD FUNDS LEGISLATION

1. LARGE MORTGAGE BANKERS HAVE COLLAPSED IN RECENT YEARS, CAUSING CHECKS ISSUED TO REAL ESTATE CLOSING AGENTS TO BE INSUFFICIENT. WHEN THIS HAPPENS, THE CHECKS ISSUED BY THE CLOSING AGENT TO THE SELLER ALSO BOUNCE.
2. OVER 28 STATES, INCLUDING MISSOURI, HAVE ADOPTED LAWS WHICH PROTECT THE CONSUMER AGAINST THE LOSS OF CLOSING FUNDS.
3. THE SECONDARY MARKET FOR MORTGAGE LOANS HAS LED TO A NEW SPECIES OF LENDER - THE MORTGAGE BANKER. THE MORTGAGE BANKER IS A MORTGAGE LENDER WHICH IS NOT ALSO A DEPOSITORY INSTITUTION. ITS SOLE BUSINESS IS THE MAKING AND SELLING OF LOANS.
4. BECAUSE THE MORTGAGE BANKER HAS NO DEPOSITS TO DRAW ON, IT BORROWS THE FUNDS IT LENDS FROM A COMMERCIAL BANK, SOMETIMES CALLED THE WAREHOUSE LENDER, USING A LINE OF CREDIT.
5. THE MORTGAGE BANKER SELLS IT LOANS TO THE SECONDARY MARKET AS QUICKLY AS POSSIBLE AFTER CLOSING AND THE MORTGAGE BANKER THEN PAYS BACK THE WAREHOUSE LENDER AND LENDS THE MONEY AGAIN.
6. MORTGAGE BANKERS USE TITLE COMPANIES TO CLOSE THEIR LOANS. THIS INVOLVES A 2 STEP FUNDING SYSTEM. THE WAREHOUSE LENDER ISSUES ITS FUNDS TO THE CLOSER AND THE CLOSER THEN ISSUES ITS CHECKS TO THE SELLER AND TO PAY OFF THE SELLER'S LIENS. IF THE WAREHOUSE LENDER ISSUES A CHECK, IT MAY HAVE THE RIGHT TO REFUSE TO HONOR THE CHECK BECAUSE IT DECLARES THE MORTGAGE BANKER IN DEFAULT.
7. WHEN THE WAREHOUSE LENDER REFUSES TO HONOR ITS CHECK, THE CHECKS ISSUED BY THE CLOSER WILL BOUNCE, CAUSING A LOSS TO THE CONSUMER.
8. EXAMPLE OF GOOD FUNDS LEGISLATION:
 1. TITLE INSURANCE COMPANIES AND AGENTS, WHO ACCEPT FUNDS OF MORE THAN \$2,500.00, MAY DISBURSE FROM THE ESCROW ACCOUNTS ONLY WHEN A CORRESPONDING DEPOSIT HAS BEEN MADE TO THE ESCROW ACCOUNT, WHICH WAS RECEIVED AS "CERTIFIED FUNDS" OR WHICH HAS BEEN ON DEPOSIT IN THE ESCROW ACCOUNT FOR TEN DAYS.

2. FUNDS DRAWN ON AN ESCROW ACCOUNT OF A REAL ESTATE BROKER LICENSED IN THE STATE OF KANSAS, OR RECEIVED FROM GOVERNMENTAL ENTITIES SHALL BE EXEMPT FROM THE PROVISIONS OF THIS SECTION.
3. CERTIFIED FUNDS SHALL INCLUDE:
 1. LAWFUL MONEY OF THE UNITED STATES;
 2. WIRE TRANSFERS SUCH THAT THE FUNDS ARE UNCONDITIONALLY RECEIVED BY THE TITLE INSURANCE COMPANY OR AGENT;
 3. CASHIER'S CHECKS, CERTIFIED CHECKS, OR BANK MONEY ORDERS ISSUED BY A FEDERALLY INSURED FINANCIAL INSTITUTION AND UNCONDITIONALLY HELD BY THE TITLE INSURANCE COMPANY OR AGENT.
4. VIOLATIONS OF THIS SECTION MAY RESULT IN A FINE OF NOT MORE THAN \$2,000.00 FOR EACH VIOLATION, PLUS THE COST OF INVESTIGATION.



Kansas Association of REALTORS®

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TO: SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS
DATE: JANUARY 28, 1999
SUBJECT: SB 60, TITLE INSURANCE AND ESCROW ACCOUNT

The Kansas Association of REALTORS® supports this legislation. Our members in the Wichita Area Association of REALTORS® have seen first-hand the damage that can be done to consumers when money is placed with title companies who hold real estate escrow accounts.

This is an unmonitored area of the real estate transaction. Real estate brokers who have escrow accounts have very clear rules in the Kansas Real Estate Salespersons and Brokers Act regarding money placed in those escrow accounts. There are rules for when the money must be deposited and when it can be disbursed. Brokers are also subject to surprise audits by the Kansas Real Estate Commission. Additionally, there is a Real Estate Recovery Revolving Fund that is available for the public to cover situations if a broker absconds with money.

This kind of legislation is long overdue. While annual audits may not have stopped the Wichita debacle, it might have reduced the amount of money and the number of consumers damaged. However, audits, alone, will not create sufficient safeguards. We believe the legislation should also provide for some sort of pool for consumers who incur losses due to the insolvency or negligent activity of these entities. We recommend looking at some sort of bonding requirement, or perhaps a letter of credit as has been proposed in the mortgage broker bill in this committee.

As many individuals and businesses found out in Wichita, when an escrow holder goes bankrupt, the chances of getting any of your money back is very slim. Homeowners have nowhere to go when they end up with two mortgages on their home after they re-finance, because the closing escrow agent used the money to pay their own bills and did not pay off the first mortgage before filing the second. The bad actor may go to jail, but where does the money come from to pay off the first mortgage? Even if the bad actor is ordered to pay restitution, restitution payments are spread out over time, thus still leaving the homeowner in a precarious position over time. We urge the committee to create some sort of pool for consumers to be able to tap when these unfortunate occurrences happen.

We respectfully ask for your support of the legislation.

Senate Financial Institutions & Insurance

Date 1/28/99

Attachment # 2

(Proposed 9-2211) New Section 1. (a) Each applicant or registrant who maintains a bona fide office shall comply with at least one of the following:

(1) Submit written evidence which shows, to the commissioner's satisfaction, the applicant or registrant has been approved as a mortgagee by:

(A) The federal department of housing and urban development;

(B) The federal national mortgage association; or

(C) The federal home loan mortgage corporation.

(2) (A) File with the commissioner a surety bond or irrevocable letter of credit in the amount of \$25,000, in a form acceptable to the commissioner, issued by an insurance company or financial institution authorized to conduct business in this state, securing the applicant's or registrant's faithful performance of all duties and obligations of a registrant.

(i) Such bond or letter of credit shall be payable to the Office of the State Bank Commissioner.

(ii) The terms of the bond or irrevocable letter of credit shall provide that it may not be terminated without 30 days prior written notice to the commissioner.

(iii) The bond or irrevocable letter of credit shall be available for the recovery of expenses, fines, and fees levied by the commissioner under this act, and for losses or damages as determined by the commissioner which are incurred by any person as a result of the applicant's or registrant's failure to comply with the requirements of this act; and

(B) Submit evidence that establishes, to the commissioner's satisfaction, that the applicant or registrant shall at all times maintain not less than \$10,000 in liquid assets acceptable to the commissioner.

(3) Submit evidence that establishes, to the commissioner's satisfaction, that the applicant or registrant shall at all times maintain a minimum net worth of \$100,000. Evidence of net worth shall include the submission of a balance sheet accompanied by a written statement by an independent certified public accountant attesting that the balance sheet has been reviewed in accordance with generally accepted accounting principles.

(b) Each applicant or registrant who does not maintain a bona fide office shall comply with both of the following:

(1) File with the commissioner a surety bond or irrevocable letter of credit in the amount of \$100,000, in a form acceptable to the commissioner, issued by an insurance company or financial institution authorized to conduct business in this state, securing the applicant's or registrant's faithful performance of all duties and obligations of a registrant.

(A) Such bond or letter of credit shall be payable to the Office of the State Bank Commissioner.

Senate Financial Institutions & Insurance

Date 1/28/99

Attachment # 3

§ 10-121

ANNOTATED CODE OF MARYLAND

"Commissioner"	§ 1-101	"Life Insurance"	§ 1-101
"Health Insurance"	§ 1-101	"Person"	§ 1-101
"Insurance"	§ 1-101	"Property Insurance"	§ 1-101
"Insurer"	§ 1-101	"State"	§ 1-101

§ 10-121. Title insurance agents or brokers.

(a) Conversion or misappropriation of money. — A title insurance agent or title insurance broker may not convert or misappropriate money received or held in escrow or trust while:

- (1) acting as a title insurance agent or title insurance broker; or
- (2) providing any escrow, closing, or settlement services.

(b) Limited liability company, partnership or corporation applicants — Qualifications. — (1) If an applicant for a certificate of qualification is a partnership, each partner must hold a certificate of qualification to act as a title insurance agent or title insurance broker and, if applicable, an appointment with a title insurer.

(2) If an applicant for a certificate of qualification is a corporation, each controlling owner and each officer must hold a certificate of qualification to act as a title insurance agent or title insurance broker and, if applicable, an appointment with a title insurer.

(3) If an applicant for a certificate of qualification is a limited liability company, each individual who has direct control over its fiscal management and each manager and officer must hold a certificate of qualification to act as a title insurance agent or title insurance broker and, if applicable, an appointment with a title insurer.

(c) Same — Investigation of character. — (1) When the application of a partnership for a certificate of qualification as a title insurance agent or title insurance broker is submitted, the Commissioner shall investigate the character of each partner of the partnership applicant.

(2) When the application of a corporation for a certificate of qualification as a title insurance agent or title insurance broker is submitted, the Commissioner shall investigate the character of each controlling owner and each officer and director of the corporate applicant.

(3) When the application of a limited liability company for a certificate of qualification is submitted, the Commissioner shall investigate the character of each individual who has direct control over its fiscal management and each member, manager, officer, and director of the limited liability company applicant.

(d) Bond or letter of credit — Required. — (1) In addition to meeting any of the applicable requirements for a certificate of qualification to act as an agent or broker under this subtitle, a sole proprietor, a limited liability company, a partnership, or a corporate applicant for a certificate of qualification as a title insurance agent or title insurance broker shall file with the Commissioner:

- (i) a blanket fidelity bond covering appropriate employees; and
- (ii) 1. a blanket surety bond; or
- 2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for \$100,000.

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(3) The Commissioner may adopt regulations that specify when it is appropriate for a bond or letter of credit to be less than \$100,000.

(4) Notwithstanding paragraph (2) of this subsection, the Commissioner may waive the requirement for a bond or letter of credit if the Commissioner finds that bonds are not generally available or reasonably affordable.

(5) The Commissioner shall make a specific finding that states the reason for accepting a bond or letter of credit for less than \$100,000.

(e) *Same — Persons benefited; liability.* — (1) The surety bond or letter of credit shall be for the benefit of any person that suffers a loss if the title insurance agent or title insurance broker converts or misappropriates money received or held in escrow or trust while:

(i) acting as a title insurance agent or title insurance broker; or

(ii) providing any escrow, closing, or settlement services.

(2) The fidelity bond shall be for the benefit of the employer of the title insurance agent or title insurance broker who suffers any loss as described in paragraph (1) of this subsection.

(3) The total liability of the surety insurer under each bond or letter of credit may not exceed \$100,000.

(f) *Same — When filed.* — The title insurance agent or title insurance broker shall file the bond or letter of credit with the Commissioner:

(1) after the Commissioner notifies the title insurance agent or title insurance broker of the approval of the application for a certificate of qualification; and

(2) before the Commissioner issues the certificate of qualification.

(g) *Same — Duration; cancellation.* — (1) Each bond or letter of credit shall remain in force until:

(i) the surety insurer is released from liability by the Commissioner; or

(ii) the bond or letter of credit is canceled by the surety insurer.

(2) A surety insurer shall notify the title insurance agent or title insurance broker and the Commissioner at least 30 days before canceling a bond or letter of credit.

(3) If a surety insurer fails to notify the title insurance agent or title insurance broker and the Commissioner as required by paragraph (2) of this subsection, the bond or letter of credit remains in effect until the surety insurer notifies the title insurance agent or title insurance broker and the Commissioner.

(4) A cancellation under this subsection does not affect any liability that occurred during the life of the bond or letter of credit and before the date of cancellation.

(h) *Renewal of certificate of qualification.* — Before the Commissioner renews the certificate of qualification of a title insurance agent or title insurance broker, the title insurance agent or title insurance broker shall submit satisfactory evidence of compliance with this section.

(i) *Restraining order.* — (1) If a title insurance agent or title insurance broker has been charged with a violation of this section or this article that could result in suspension or revocation of the certificate of qualification of the title insurance agent or title insurance broker, the Commissioner may seek an

§ 10-121

ANNOTATED CODE OF MARYLAND

immediate restraining order from a circuit court to prohibit the title insurance agent or title insurance broker from providing title insurance, escrow, closing, or settlement services.

(2) A restraining order issued by a court under this subsection is effective until:

(i) the court lifts the restraining order; or

(ii) the charges are dismissed or adjudicated.

(j) *Statement of financial condition; on-site review.* — (1) (i) Except as provided in subparagraph (ii) of this paragraph, no later than December 31 of the year following the year covered by the financial statement, for each title insurance agent and agency that has an appointment with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent and agency with an appointment with the title insurer, as of the end of the previous calendar year, setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of December 31st preceding certified by the title insurance agent or agency as being a true and accurate representation of the title insurance agent's or agency's financial condition.

(ii) An individual who is an employee, officer, director, partner, or member of a licensed title insurance agency shall be considered to have met the requirements of subparagraph (i) of this paragraph if a statement of financial condition of the agency with which the individual is associated is on file with the title insurer as provided under this paragraph.

(2) (i) The title insurer shall, at least annually, conduct an on-site review of the underwriting, claims, and escrow practices of each title insurance agent appointed by the insurer as a principal agent as designated in the title insurance agency contract between the insurer and the agent. The on-site review shall include a review of the title insurance agent's or agency's policy blank inventory and processing operations.

(ii) If the title insurance agent or agency does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent or agency.

(3) A written report setting forth the results of the on-site review shall be prepared by the title insurer and is subject to financial examination under § 2-205 of this article.

(4) If, as a result of the examination, a title insurer has reasonable cause to believe that a title insurance agent or agency has failed to remit premiums or funds owed or that any other violation of this article has been committed, the title insurer shall report in writing the suspected violation to the Commissioner and submit a copy of the examination.

(5) The examination required under this section is in addition to any examination conducted by the Commissioner to determine compliance with the accounts maintained for the benefit of the Maryland Affordable Housing Trust under § 22-108 of this article.

(k) *Leaving employment or ending association.* — (1) A title insurance agent or title insurance broker shall notify the Commissioner, and any insurer with

whom the title insurance agent or title insurance broker holds an appointment, if an individual licensed under this subtitle leaves the employment of or ends an association with the title insurance agent or title insurance broker.

(2) The title insurance agent or title insurance broker required to provide notice under this subsection shall notify the Commissioner within 5 working days after the day the individual leaves employment or ends the association.

(3) The notice required under this subsection shall be in writing and by certified mail.

(1) *Compliance with section.* — In addition to any requirements under Title 10, Subtitle 1 of this article, title insurance agents and title insurance brokers shall comply with this section. (An. Code 1957, art. 48A, § 168A; 1995, ch. 36; ch. 635, § 2; 1996, ch. 206, §§ 2, 4; ch. 239, § 2; 1997, ch. 57, §§ 1, 2; ch. 70, § 1.)

SPECIAL REVISOR'S NOTE

As enacted by Ch. 36, Acts of 1995, this section was new language derived without substantive change from former Art. 48A, § 168A(b)(1) and (2)(i) and (c) through (j). However, Ch. 635, Acts of 1995, extensively amended this section. Chapters 206 and 239, Acts of 1996, also extensively amended this section. Chapter 57, Acts of 1997, amended subsection (b)(3) of this section and added subsection (1) of this section, which formerly was Art. 48A, § 168A(b). Chapter 70, Acts of 1997, corrected the cross-reference in subsection (j)(5) of this section.

In subsection (g)(1), (2), and (3) of this section, Ch. 36 substituted the references to a "surety insurer" for the former references to "insurer" to clarify the type of insurer that is authorized to issue a fidelity or surety bond.

In subsection (g)(1), (2), (3), and (4) of this section, Ch. 36 added the references to a "letter of credit" for consistency throughout this section.

In subsection (g)(2) of this section, Ch. 36 deleted the former references to a bond that is

"forfeited]" or "terminat[ed]" as included in the reference "canceling" the bond.

Former Art. 48A, § 168A(b)(2)(ii), which provided that "[t]his section does not apply to... [a] lawyer who is admitted to practice before the Court of Appeals of the State of Maryland", was deleted by Ch. 36 as unnecessary in light of § 10-102(b)(6) of this subtitle.

Defined terms:

"Agent"	§ 1-101
"Appointment"	§ 1-101
"Authorized insurer"	§ 1-101
"Certificate of qualification"	§ 10-101
"Commissioner"	§ 1-101
"Insurer"	§ 1-101
"Person"	§ 1-101
"Premium"	§ 1-101
"Title insurance"	§ 10-101
"Title insurance agent"	§ 10-101
"Title insurance broker"	§ 10-101

Editor's note. — This section is set out above as amended by ch. 635, Acts 1995, chs. 206 and 239, Acts 1996, and chs. 57 and 70, Acts 1997, all effective Oct. 1, 1997.

§ 10-122. Special certificates of qualification — Sellers of transportation tickets.

(a) *In general.* — Without regard to the education, experience, or examination requirements of this subtitle, the Commissioner may issue a special restricted certificate of qualification to an individual who sells transportation tickets of a common carrier of persons and property.

(b) *Scope of certificate of qualification.* — A special restricted certificate of qualification issued under this section authorizes the holder to act as an agent

3-5



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions and Insurance Committee

From: Linda J. De Coursey, Director of Government Affairs

Re: Senate Bill 60 (Regulation of Title Insurance)

Date: January 28, 1999

Mr. Chairman and members of the Committee:

Thank you for allowing us the opportunity to discuss SB 60. This legislation strengthens the ability of the Kansas Insurance Department to regulate the real estate settlement and closing activities of title insurers. SB 60 is basically the equivalent of the amended version of 1998 Housed Bill 2966, which was introduced at the request of the Kansas Land Title Association in response to the bankruptcy last year of Realty Title Company in Wichita. When that company closed its doors, there were a number of consumers who were left without escrow funds which they had deposited with Realty Title as part of the closing costs on home purchases. The company filed for bankruptcy, with approximately \$1.0 million in funds not being accounted for, and over 700 creditors having filed claims.

The bill requires escrow funds to be deposited in a bank account no later than the close of the next business day after receipt by the title agent. These funds can not be combined with any personnel funds of the title insurance agent. The money can not be used to pay for any expenses other than as specified in the escrow agreement. SB 60 also requires periodic audits by the title agent of their business, as any prudent business would do to establish good business practices. The audit reports will be available for review by each title insurance company that the title agent represents, and also the Insurance Commissioner.

A provision is also in the bill to require title companies to obtain permission from their clients if the company intends to keep any interest generated by an escrow account.

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Senate Financial Institutions & Insurance

Date 1/28/99

Attachment # 4

The issue of adding a requirement for bond or letter of credit for the title insurance agents and agencies has been discussed. In researching this requirement with other states, we find that three other states require bonding on title insurance agencies and agents: Florida requires a \$50,000 bond; Pennsylvania requires a \$50,000 bond; and Maryland requires \$200,000 bond which consists of \$100,000 surety bond; and \$100,000 fidelity bond. These states require title insurance agencies to be bonded. The bond covers the agents working at the agency. If an agent is working independently, he or she has to obtain a bond to cover the operation. Should you decide to add language to SB 60 to include a bond requirement, the Insurance Commissioner would agree to that amendment. And, certainly we can look to these other states for existing language on the matter. We are willing to work with the other interested parties on the issue of bonding.

For a point of clarification, it is our opinion that the language on page two, line 43, and page three, lines 1-3 may suggest that two different agents exist, when really it is only one person i.e., "a title insurance agent shall not commingle the escrow agent's personal funds or other moneys with escrow funds." The language throughout the bill refers to the title insurance agent and then brings in escrow agent, and we prefer to keep using "title insurance agent". I have attached the proposed language to amend the bill.

Senate Bill 60 will provide important protections for consumers who place escrow funds with title companies. I would respectfully ask that the committee recommend the legislation favorable for passage.

Page two of SB 60

Sec. 3 (c)

43 (c) A title insurance agent shall not commingle ~~the escrow agent's~~ *his or her*

Page three – SB 60

1 personal funds or other moneys with escrow funds. In addition, the ~~es-~~
2 ~~crow~~ *title insurance* agent shall not use escrow funds to pay or to indemnify against the
3 debts of the escrow agent or of any other party. The escrow funds shall
4 be used only to fulfill the terms of the individual escrow and none of the
5 funds shall be utilized until the necessary conditions of the escrow have
6 been met.



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The Voice for Real Estate®

Testimony of Erik Sartorius
Governmental Affairs Director
Before the
Senate Financial Institutions and Insurance Committee
Regarding
SB 60 Title Insurance and Escrow Accounts

January 28, 1999

The Johnson County Board of REALTORS® supports this legislation. Although Johnson, Wyandotte, and Miami Counties have not yet experienced a situation similar to that in Wichita, we recognize the problems consumers can face.

With the large volume of home sales in Johnson, Wyandotte, and Miami Counties, our Realtors consider their area fortunate to have not had a title company fail. In 1998 alone, 10,036 homes were sold in Johnson County, and 1,201 were sold in Wyandotte County. With these numbers in mind, consider the potential hardship hundreds of consumers would face with the failure of one title company holding real estate escrow accounts in this area.

We believe this legislation is a good beginning for providing consumers needed protection. As you may know, real estate brokers who have escrow accounts must handle those accounts under very specific rules laid out under the Kansas Real Estate Salespersons and Brokers Act. Worth noting is the fact that consumers can seek relief through the Real Estate Recovery Revolving Fund should a broker abscond with money in an escrow account.

SB 60 makes good progress in bringing needed safeguards to escrow accounts handled by title companies. We believe the auditing provisions will allow the Insurance Commissioner's office to observe the symptoms of ailing title companies. This may reduce the degree of losses faced by consumers; however, losses will still occur.

As we have seen in Wichita, chances are minimal for consumers to recover their money when an escrow holder declares bankruptcy. There is little solace found in seeing the offending party going to jail. The victim is left standing in line at bankruptcy court behind all the other creditors, often having to scramble to pay both their new mortgage as well as the first one that was not paid by the closing escrow agent. With this situation in mind, the Johnson County Board of REALTORS® asks that the committee create a mechanism to allow consumers a means of recovering their losses. Requiring some sort of bonding or a letter of credit, as proposed in the mortgage broker bill introduced in this committee, may meet this need.

We respectfully seek your support of the legislation.

Senate Financial Institutions & Insurance

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Date 1/28/99

Attachment # 5

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