

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 2257

## 98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE JONES.

5419H.01P

D. ADAM CRUMBLISS, ChiefClerk

---

### AN ACT

To repeal sections 327.272, 381.022 and 381.058, RSMo, and to enact in lieu thereof three new sections relating to title insurance.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 327.272, 381.022 and 381.058, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 327.272, 381.022 and 381.058, to read as follows:

327.272. 1. A professional land surveyor shall include any person who practices in Missouri as a professional land surveyor who uses the title of "surveyor" alone or in combination with any other word or words including, but not limited to "registered", "professional" or "land" indicating or implying that the person is or holds himself or herself out to be a professional land surveyor who by word or words, letters, figures, degrees, titles or other descriptions indicates or implies that the person is a professional land surveyor or is willing or able to practice professional land surveying or who renders or offers to render, or holds himself or herself out as willing or able to render, or perform any service or work, the adequate performance of which involves the special knowledge and application of the principles of land surveying, mathematics, the related physical and applied sciences, and the relevant requirements of law, all of which are acquired by education, training, experience and examination, that affect real property rights on, under or above the land and which service or work involves:

(1) The determination, location, relocation, establishment, reestablishment, layout, or retracing of land boundaries and positions of the United States Public Land Survey System;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (2) The monumentation of land boundaries, land boundary corners and corners of the  
16 United States Public Land Survey System;

17 (3) The subdivision of land into smaller tracts and preparation of property descriptions;

18 (4) The survey and location of rights-of-way and easements;

19 (5) Creating, preparing, or modifying electronic or computerized data relative to the  
20 performance of the activities in subdivisions (1) to (4) of this subsection;

21 (6) Consultation, investigation, design surveys, evaluation, planning, design and  
22 execution of surveys;

23 (7) The preparation of any drawings showing the shape, location, dimensions or area of  
24 tracts of land;

25 (8) Monumentation of geodetic control and the determination of their horizontal and  
26 vertical positions;

27 (9) Establishment of state plane coordinates;

28 (10) Topographic surveys and the determination of the horizontal and vertical location  
29 of any physical features on, under or above the land;

30 (11) The preparation of plats, maps or other drawings showing elevations and the  
31 locations of improvements and the measurement and preparation of drawings showing existing  
32 improvements after construction;

33 (12) Layout of proposed improvements;

34 (13) The determination of azimuths by astronomic observations.

35 2. None of the specific duties listed in subdivisions (4) to (13) of subsection 1 of this  
36 section are exclusive to professional land surveyors unless they affect real property rights. For  
37 the purposes of this section, the term "real property rights" means a recordable interest in real  
38 estate as it affects the location of land boundary lines. The validity of any document prepared  
39 between August 27, 2014, and August 28, 2015, by a provider of utility or communications  
40 services purporting to affect real property rights shall remain valid and enforceable  
41 notwithstanding that any legal description contained therein was not prepared by a professional  
42 land surveyor.

43 3. Professional land surveyors shall be in responsible charge of all drawings, maps,  
44 surveys, and other work product that can affect the health, safety, and welfare of the public  
45 within their scope of practice.

46 4. Nothing in this section shall be construed to preclude the practice of architecture or  
47 professional engineering or professional landscape architecture as provided in sections 327.091,  
48 327.181, and 327.600.

49 **5. Nothing in this section shall preclude a licensed attorney in this state or a**  
50 **licensed title insurance company, agent, or agency from preparing sketches, conducting**

51 **investigations into real estate titles and descriptions, and preparing land or legal**  
52 **descriptions for clients or customers, provided that the legal description includes the date**  
53 **it was prepared and the name of the preparer, including the license number and signature,**  
54 **and the parcel is described by aliquot part.**

381.022. 1. As used in sections 381.011 to 381.412, the following terms mean:

2 (1) "Escrow", written instruments, money or other items deposited by one party with a  
3 depository, escrow agent, or escrowee for delivery to another party upon the performance of a  
4 specified condition or the happening of a certain event;

5 (2) "Qualified depository institution", an institution that is:

6 (a) Organized or, in the case of a United States branch or agency office of a foreign  
7 banking organization, licensed under the laws of the United States or any state and has been  
8 granted authority to operate with fiduciary powers;

9 (b) Regulated, supervised, and examined by federal or state authorities having regulatory  
10 authority over banks and trust companies;

11 (c) Insured by the appropriate federal entity; and

12 (d) Qualified under any additional rules established by the director;

13 (3) "Security" or "security deposit", funds or other property received by the title insurer  
14 as collateral to secure an indemnitor's obligation under an indemnity agreement under which the  
15 insurer is granted a perfected security interest in the collateral in exchange for agreeing to  
16 provide coverage in a title insurance policy for a specific title exception to coverage.

17 2. A title insurer, title agency, or title agent not affiliated with a title agency may operate  
18 as an escrow, security, settlement, or closing agent, provided that all funds deposited with the  
19 title insurer, title agency, or title agent not affiliated with a title agency, pursuant to written  
20 instructions in connection with any escrow, settlement, closing, or security deposit shall be  
21 submitted for collection to or deposited in a separate fiduciary trust account or accounts in a  
22 qualified depository institution no later than the close of the second business day after receipt,  
23 in accordance with the following requirements:

24 (1) The funds regulated under this section shall be the property of the person or persons  
25 entitled to them under the provisions of the escrow, settlement, security deposit, or closing  
26 agreement and shall be segregated for each depository by escrow, settlement, security deposit,  
27 or closing in the records of the title insurer, title agency, or title agent not affiliated with a title  
28 agency, in a manner that permits the funds to be identified on an individual basis and in  
29 accordance with the terms of the individual written instructions or agreements under which the  
30 funds were accepted; and

31 (2) The funds shall be applied only in accordance with the terms of the individual written  
32 instructions or agreements under which the funds were accepted.

33 3. It is unlawful for any person to:

34 (1) Commingle personal or any other moneys with escrow funds regulated under this  
35 section;

36 (2) Use such escrow funds to pay or indemnify against debts of the title insurance agent  
37 or of any other person;

38 (3) Use such escrow funds for any purpose other than to fulfill the terms of the individual  
39 written escrow instructions after the necessary conditions of the written escrow instructions have  
40 been met;

41 (4) Disburse any funds held in an escrow account unless the disbursement is made under  
42 a written instruction or agreement specifying under what conditions and to whom such funds  
43 may be disbursed or under an order of a court of competent jurisdiction; or

44 (5) Disburse any funds held in a security deposit account unless the disbursement is  
45 made under a written agreement specifying:

46 (a) What actions the indemnitor shall take to satisfy his or her obligation under the  
47 agreement;

48 (b) The duties of the title insurer, title agency, or title agent not affiliated with a title  
49 agency with respect to disposition of the funds held, including a requirement to maintain  
50 evidence of the disposition of the title exception before any balance may be paid over to the  
51 depositing party or his or her designee; and

52 (c) Any other provisions the director may require by rule or order.

53 4. Notwithstanding the provisions of subsection 3 of this section, any bank credits, bank  
54 services, interest, or similar consideration received on funds deposited in connection with any  
55 escrow, settlement, security deposit, or closing may be retained by the title insurer, title agency,  
56 or title agent not affiliated with a title agency as compensation for administration of the escrow  
57 or security deposit, unless the specific written instructions for the funds or a governing statute  
58 provides otherwise.

59 5. Notwithstanding the provisions of subsection 2 of this section, a title insurer, title  
60 agency, or title agent is not authorized to provide such services as an escrow, security, settlement,  
61 or closing agent in a residential real estate transaction unless as part of the same transaction the  
62 title insurer, title agency, or title agent issues a commitment, binder, or title insurance policy and  
63 closing protection letters have been issued protecting the buyer's, **lender's**, and the seller's  
64 interests, or **if a title insurance policy is not being issued by the title insurer, title agency, or**  
65 **title agent, the title insurer**, the title agency, or **title agent** has given written notice to the  
66 affected person in a title insurance commitment or on a form approved by rule promulgated by  
67 the director that the person's interest in the closing or settlement is not protected by the title  
68 insurer, title agency, or title agent.

69           6. It is unlawful for any **title insurer**, title agency, or **title** agent to engage in the handling  
70 of an escrow, settlement or closing of a residential real estate transaction unless the escrow  
71 handling, settlement or closing is conducted or performed in contemplation of and in conjunction  
72 with the issuance of a title insurance policy [or] **and** a closing protection letter, or **if a title**  
73 **insurance policy is not being issued by the title insurer, title agency, or title agent**, prior to  
74 the receipt of any funds, the **title insurer**, title agency, or **title** agent clearly discloses to the  
75 seller, buyer or lender involved in such escrow, settlement or closing, that no title insurer is  
76 providing any protection for closing or settlement funds received by the title agency or agent.

77           7. A violation of any provision under this section is a level three violation under section  
78 374.049.

381.058. 1. No insurer that transacts any class, type, or kind of business other than title  
2 insurance shall be eligible for the issuance or renewal of a license to transact the business of title  
3 insurance in this state nor shall title insurance be transacted, underwritten, or issued by any  
4 insurer transacting or licensed to transact any other class, type, or kind of business.

5           2. A title insurer shall not engage in the business of guaranteeing payment of the  
6 principal or the interest of bonds or mortgages.

7           3. (1) Notwithstanding subsection 1 of this section or anything else to the contrary in  
8 sections 381.011 to 381.405, a title insurer is expressly authorized to issue closing or settlement  
9 protection letters (and to collect a fee for such issuance) in all transactions where its title  
10 insurance policies are issued and where its issuing agent or agency is performing settlement  
11 services and shall do so in favor of [and upon request by] the applicable buyer, lender, or seller  
12 in [such transaction] **all residential real estate transactions**. Such closing or settlement  
13 protection letter form shall be filed with the director under section 381.085 and shall conform  
14 to the terms of coverage and form of instrument as required by rule of the director and shall  
15 indemnify a buyer, lender, or seller solely against losses not to exceed the amount of the  
16 settlement funds only because of the following acts of the title insurer's named issuing title  
17 agency or title agent:

18           (a) Acts of theft of settlement funds or fraud with regard to settlement funds; and

19           (b) Failure to comply with written closing instructions by the proposed insured when  
20 agreed to by the title agency or title agent relating to title insurance coverage.

21           (2) The rate for issuance of a closing or settlement protection letter in a residential real  
22 estate transaction indemnifying a lessee or purchaser of an interest in land, a borrower, or a  
23 lender secured by a mortgage, including any other security instrument, of an interest in land shall  
24 be filed as a rate with the director.

25           (3) The rate for issuance of a closing or settlement protection letter in a residential real  
26 estate transaction indemnifying a seller of an interest in land shall be filed as a separate rate with  
27 the director.

28           (4) Such filed rate shall not be excessive or inadequate. The entire rate for the closing  
29 or settlement protection letter shall be retained by the title insurer.

30           (5) Except as provided under this section or section 381.403, a title insurer shall not  
31 provide any other coverage which purports to indemnify against improper acts or omissions of  
32 a person with regard to escrow, settlement, or closing services.

✓