

SESSION OF 2004

SUPPLEMENTAL NOTE ON SENATE BILL NO. 424

As Amended by House Committee on
Judiciary

Brief*

SB 424 provides that the transfer by warranty deed of real property into an *inter vivos* trust shall not affect the coverage of any title insurance if:

- ! the real property qualifies as a homestead; and
- ! the settlor of the trust is and remains a beneficiary and occupant of the real property.

Once the transfer takes effect, the trustee shall be deemed to be insured, and the insurance coverage for the trust shall be subject to the defenses which the insurance company has under the policy against the original named insured. If the transferor is a beneficiary of the trust at the time of the transfer, the transfer of the property into the trust shall not affect any homestead exemption or redemption rights; or cause a due on sale or similar clause to be effective under a mortgage or security interest.

The House Committee deleted the provision regarding the homestead qualification and the requirement that the settlor of a trust remain an occupant of the real property. Another change would require the settlor to remain a beneficiary of the trust during the settlor's lifetime.

An additional change would amend the language regarding the transfer of property into a trust by replacing the term transferor with the term settlor.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

The original bill was requested by the Kansas Bar Association's Real Estate, Probate and Trust section. A proponent said that revocable trusts are used increasingly to avoid probate proceedings and to save costs but some title insurance companies around the nation have refused to defend the title of property placed in a revocable trust and a bankruptcy court refused to recognize a state's homestead exemption on residential property placed in a revocable trust.

A representative of the Columbian National Title Insurance Company said there were serious concerns about SB 424.

The Senate Committee amendments were proposed by the Kansas Bar Association to address the concerns of the title company.