

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 979

By: Howard

AS INTRODUCED

An Act relating to abstracting; amending 1 O.S. 2021, Sections 21, 32, 35, 36, 41, and 43, which relate to the Oklahoma Abstractors Act; modifying definitions; providing exception for determination of certain unnecessary delay; increasing certain civil penalty; requiring notice to Oklahoma Abstractors Board for certain noncompliance; requiring response to notice within specified time period; defining term; increasing certain civil penalty; modifying definition; prohibiting reliance on county index for preparation of abstract of title; clarifying civil penalty for certain violation; increasing certain civil penalty; requiring release of certain abstract or insurance policy upon written request; increasing certain civil penalty; updating statutory language; updating statutory reference; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 1 O.S. 2021, Section 21, is amended to read as follows:

Section 21. As used in the Oklahoma Abstractors Act:

1 1. "Abstract of title" ~~is~~ means a compilation in orderly
2 arrangement of the materials and facts of record, in the office of
3 the county clerk and court clerk, affecting the title to a specific
4 tract of land issued pursuant to a certificate certifying to the
5 matters therein contained;

6 2. "Abstract plant" ~~shall consist of~~ means a set of records in
7 which an entry has been made of all documents or matters which
8 legally impart constructive notice of matters affecting title to
9 real property, any interest therein or encumbrances thereon, which
10 are filed, recorded and currently available for reproduction in the
11 offices of the county clerk and the court clerk in the county for
12 which such abstract plant is maintained. Such records shall consist
13 of:

14 a. an index in which notations of or references to any
15 documents that describe the property affected are
16 included, according to the property described or in
17 which copies or briefs of all such documents that
18 describe the property affected are sorted and filed
19 according to the property described, which is compiled
20 from the instruments of record affecting real property
21 in the county offices and not copied or reproduced
22 from any county index, and

23 b. an index or files in which all other documents,
24 pending suits affecting real property and liens,

1 except ad valorem taxes and special assessments, are
2 posted, entered, or otherwise included, according to
3 the name of the parties whose title to real property
4 or any interest therein or encumbrances thereon is
5 affected, which is compiled from the instruments of
6 record affecting real property in the county offices
7 and not copied from any county index;

8 3. "Abstract license" ~~is~~ means the authorization for a person
9 working for a holder of a certificate of authority to search and
10 remove from county offices county records, summarize or compile
11 copies of such records, and issue the abstract of title;

12 4. "Act" or "Oklahoma Abstractors Law" means the Oklahoma
13 Abstractors Act;

14 5. "Board" means the Oklahoma Abstractors Board;

15 6. "Certificate of authority" ~~is~~ means the authorization to
16 engage in the business of abstracting in a county in this state,
17 granted to a person, firm, corporation, or other entity, by the
18 Oklahoma Abstractors Board;

19 7. "Permit" ~~is~~ means the authorization to build an abstract
20 plant in a specific county; and

21 8. ~~"State Auditor and Inspector", for the purposes of the~~
22 ~~Oklahoma Abstractors Act, means the Oklahoma Abstractors Board; and~~

23 9. "Authorized agent" or "representative" of a current owner or
24 insured means a real estate broker, real estate agent, lender,
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1 attorney, title insurer, title insurance agent, escrow agent, or
2 other duly appointed agent of the current owner or insured under a
3 policy of title insurance authorized to act on behalf of such
4 current owner or insured in a current transaction.

5 SECTION 2. AMENDATORY 1 O.S. 2021, Section 32, is
6 amended to read as follows:

7 Section 32. A. All abstractors shall furnish abstracts,
8 abstract extensions, supplemental abstracts or final title reports
9 as desired, to the persons applying therefor, in the order of
10 receipt of a valid order therefor, without unnecessary delay, and
11 for reasonable compensation pursuant to the requirements of the
12 Oklahoma Abstractors Act. A valid order is a written order from the
13 person applying for the order who is a party to the transaction
14 containing the following elements:

15 1. A complete and accurate legal description or a complete and
16 accurate address, as applicable;

17 2. The availability of any necessary base abstract; and

18 3. An up-front commitment to pay for the order either upon
19 delivery or other payment conditions agreed to by the parties to the
20 transaction or a stated cancellation fee amount.

21 B. Failure of an abstractor to furnish an abstract, abstract
22 extension, supplemental abstract or final title report within the
23 following time periods shall constitute unnecessary delay, unless
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1 the Board has previously determined the existence of extenuating
2 circumstances:

3 1. For furnishing new abstracts:

4 a. unplatted: twenty (20) business days, and

5 b. platted: fifteen (15) business days; and

6 2. For furnishing an abstract extension, supplemental abstract
7 or final title report:

8 a. unplatted: seventeen (17) business days, and

9 b. platted: twelve (12) business days.

10 C. All licensed abstractors and certificate of authority
11 holders, whose business is hereby declared to stand upon a like
12 footing with that of common carriers, who shall refuse to do so,
13 upon receipt of a valid order for the abstract, abstract extension,
14 supplemental abstract or final title report, shall be subject to the
15 following:

16 1. A civil penalty of not less than ~~One Hundred Dollars~~
17 ~~(\$100.00)~~ Five Hundred Dollars (\$500.00) nor more than ~~One Thousand~~
18 ~~Dollars (\$1,000.00)~~ Two Thousand Dollars (\$2,000.00) for each
19 occurrence;

20 2. Liability in any action for damages, loss or injury which
21 any person may suffer or incur by reason of failure to furnish such
22 abstract, abstract extension, supplemental abstract or final title
23 report pursuant to the provisions of this section. This penalty may
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1 be enforced in the same manner in which civil judgments may be
2 enforced; and

3 3. Any administrative penalties and fines enforced by the
4 Oklahoma Abstractors Board.

5 D. The provisions of this section shall not apply to orders for
6 abstracts on oil, gas, and other minerals.

7 E. In the event a holder of a certificate of authority is
8 unable to comply with the requirements of this section due to
9 extenuating circumstances, the holder of the certificate shall
10 notify the Board within five (5) business days of the receipt of
11 orders that cannot be furnished within the time specified in this
12 section. The Board shall respond to the holder within three (3)
13 business days to resolve the delay and establish alternatives for
14 the timely delivery of abstracts.

15 F. For the purposes of this section, "extenuating
16 circumstances" include but are not limited to a catastrophic event
17 such as fire, tornado, pandemic, death, or the receipt of a large
18 multiple tract order such as an energy related project.

19 SECTION 3. AMENDATORY 1 O.S. 2021, Section 35, is
20 amended to read as follows:

21 Section 35. A. The Oklahoma Abstractors Board shall censure,
22 suspend, revoke, continue, renew, or refuse to issue any certificate
23 of authority or permit issued or applied for pursuant to the
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1 provisions of the Oklahoma Abstractors Act, if, after a hearing, the
2 Board finds any one or more of the following conditions:

3 1. Any untrue statement in the application for a certificate of
4 authority or permit;

5 2. The violation of or noncompliance with any provision of the
6 Oklahoma Abstractors Act or rule, regulation, or order of the Board;

7 3. The obtaining of or attempt to obtain a certificate of
8 authority or permit through fraud or misrepresentation;

9 4. Conviction of or plea of guilty or nolo contendere to a
10 felony in this state, another state, or a federal court or of a
11 misdemeanor involving moral turpitude;

12 5. Conspiracy involving the certificate holder or the
13 certificate holder's agents to obtain an abstract license for an
14 employee, prospective employee, or other person through fraud or
15 misrepresentation;

16 6. Failure to properly supervise an abstract licensee whose
17 license is issued through the certificate holder; or

18 7. Failure to provide an abstract, abstract extension,
19 supplemental abstract or final title report pursuant to the
20 requirements of Section 32 of ~~Title 1 of the Oklahoma Statutes~~ this
21 title.

22 B. In addition to or in lieu of any censure, denial,
23 suspension, or revocation of a certificate or permit, any person,
24 firm, corporation, or other entity violating the provisions of the

1 Oklahoma Abstractors Act shall be subject to a civil penalty ~~of~~ not
2 less than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars
3 (\$500.00) nor more than Ten Thousand Dollars (\$10,000.00) for each
4 occurrence. The fine may be enforced in the same manner in which
5 civil judgments may be enforced.

6 SECTION 4. AMENDATORY 1 O.S. 2021, Section 36, is
7 amended to read as follows:

8 Section 36. A. Any person, firm, corporation, or other entity
9 holding a valid abstract license or permit, or any abstract licensee
10 affiliated with such person, firm, corporation, or other entity,
11 shall:

12 1. Have free access to the instruments of record affecting real
13 property filed in any city, county, or state office;

14 2. Be permitted to make such memoranda, notations, or copies of
15 such instruments of record;

16 3. Occupy reasonable space with equipment for that purpose
17 during the business hours of such office;

18 4. Make and prepare abstracts; and

19 5. Compile, post, copy, and maintain his or her books, records,
20 and indexes.

21 B. The records in any city, county, or state office shall not
22 be taken from the office to which they belong, for any reason,
23 except that records may be taken from the office of the district
24 court clerk by an abstractor who is doing business within that

1 county and has an approved bond on file with the county clerk for a
2 period of time not to exceed twenty-four (24) hours after first
3 giving proper receipt to the appropriate clerk or deputy.

4 C. An abstractor shall have the right of access to any
5 instrument filed of record in a county office, not later than the
6 close of business of the first business day following the day of
7 filing. There shall be no fee charged for providing access to the
8 instrument.

9 D. For purposes of this section, "access" means possession of
10 said instrument to mechanically or electronically reproduce it,
11 either in the office or out of the office of filing, at the
12 discretion of the county officer having custody of the instrument,
13 which reproduction shall be completed not later than the close of
14 business of the first business day following the day of receipt of
15 the document. Provided if the abstractor fails to return the files
16 within the twenty-four-hour period, the county officer in his or her
17 discretion may refuse to allow the abstractor to remove said files
18 at a later date. Any county officer making such refusal shall send
19 written notice of such action to the Oklahoma Abstractors Board.

20 E. Access to instruments of record shall be for immediate and
21 lawful abstracting purposes only. The sale of the instruments of
22 record for profit to the public either on the internet or any other
23 such forum by any company holding a permit to build an abstract
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1 plant is prohibited, and a violation of this subsection shall be
2 considered a violation of the Oklahoma Abstractors Law.

3 F. All certificates of authority or permit holders and abstract
4 licensees shall be subject to the same obligation to protect and
5 preserve the public records to which they have access as do the
6 public officers who have legal custody of such records. Holders of
7 certificates of authority or permits and abstract licensees shall be
8 subject to the same penalties for a violation of such duty as said
9 officers.

10 G. Reliance on the county indexes in the preparation of an
11 abstract of title shall be prohibited and subject to the penalties
12 established in subsection B of Section 35 of this title and shall
13 not be a defense of liability for an error or omission in an
14 abstract of title.

15 SECTION 5. AMENDATORY 1 O.S. 2021, Section 41, is
16 amended to read as follows:

17 Section 41. A. It shall be unlawful for any abstractor as an
18 inducement to obtaining any business to pay, rebate, or deduct any
19 portion of or to permit any deduction from a charge made for making,
20 extending, or certifying an abstract of title, to:

21 1. Any owner, mortgagee, or lessee of the real property covered
22 by the abstract of title, or of any right, title, or interest in or
23 lien upon the same;

1 2. Any principal, broker, agent, or attorney in connection with
2 a sale or lease of real property or the making or obtaining of a
3 loan thereon in which an abstract of title is required, used, or
4 furnished; and

5 3. Any spouse, child, employee, ward, officer, director,
6 subsidiary, affiliate, parent, relative within the fifth degree,
7 personal representative, or partner of any person, firm, or
8 corporation included in this section.

9 B. All charges for abstracts, abstract extensions, supplemental
10 abstracts or final title reports shall be separately stated and
11 shall not be combined with title insurance, closing fees, or
12 examination charges, shall be uniform for all abstracts, abstract
13 extensions, supplemental abstracts or final title reports of
14 whatsoever kind or nature, whether the abstract, abstract extension,
15 supplemental abstract or final title report is prepared for use by
16 the abstractor or for others purchasing abstracts, abstract
17 extensions, supplemental abstracts or final title reports from the
18 abstractor; and any other charge therefor shall be unlawful.

19 C. The list of abstracting fees required to be attached to an
20 application for certificate of authority, an application to renew a
21 certificate of authority and an application to transfer a
22 certificate of authority pursuant to the provisions of Section
23 ~~227.18~~ 30 of this title shall include all fees the applicant intends
24 to charge for abstracts, abstract extensions, supplemental abstracts

1 or final title reports. The Oklahoma Abstractors Board shall notify
2 the applicant in writing of any action taken with regard to the
3 requested fees within sixty (60) days of submission. If no notice
4 is provided regarding the submitted fees, they will be deemed to
5 become effective on the sixty-first day following the day the
6 application was submitted to the Board. The fees shall also be
7 subject to the following:

8 1. No fee shall be charged that is not on the approved list;

9 2. The holder of the certificate of authority may submit an
10 amended list of fees once a year requesting approval for changes to
11 the currently approved fees; and

12 3. The amended list of fees must be approved before becoming
13 effective. The Board may disapprove a list of fees or an amended
14 list of fees if the fees are determined to be excessive or are used
15 as an unlawful inducement. In determining whether a fee is
16 excessive, the Board may consider any or all of the following:

17 a. the change from any prior rate for the same abstract,
18 abstract extension, supplemental abstract or final
19 title report,

20 b. the fee charged by other holders of certificates of
21 authority within the same county, in adjacent
22 counties, and in counties with similar
23 characteristics,

24 c. the amount of work performed,

- d. the time required to perform the work,
- e. the amount of financial risk involved to the holder of the certificate of authority,
- f. the cost of providing the abstract, abstract extension, supplemental abstract or final title report,
- g. the availability of competition,
- h. the average cost for such services across the state, and
- i. any other relevant factor applicable to a particular set of circumstances presented for approval.

D. In addition to any other penalty any person, firm, corporation, or other entity violating the provisions of this section shall be subject to a civil penalty of not less than ~~One Hundred Dollars (\$100.00)~~ and not Two Hundred Fifty (\$250.00) nor more than ~~One Thousand Dollars (\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) for each occurrence. The fine may be enforced in the same manner in which civil judgments may be enforced.

SECTION 6. AMENDATORY 1 O.S. 2021, Section 43, is amended to read as follows:

Section 43. A purchaser of real property shall have the opportunity to retain possession of the abstract for the property being purchased. The purchaser shall be notified about the option to retain possession at the scheduled closing; however, if a

1 contractual obligation to a mortgage company requires retention of
2 the abstract by that mortgage company, then the purchaser shall have
3 an opportunity to take possession of the abstract upon complete
4 performance of the contractual obligations. If a duly licensed
5 abstract company is holding or storing ~~the~~ any base or supplemental
6 abstract or abstracts or a previously issued owner's policy of title
7 insurance, upon written request from the owner or the authorized
8 agent of the owner, pursuant to a current transaction, the licensed
9 abstractor shall release the abstract ~~without unnecessary delay or~~
10 abstracts within three (3) business days of receipt of the written
11 request, or in the case of a title insurance policy, shall release
12 the owner's policy pursuant to subsection D of Section 5001 of Title
13 36 of the Oklahoma Statutes. All licensed abstractors and
14 certificate of authority holders who refuse to do so shall be
15 subject to the following:

16 1. A civil penalty to the requesting party ~~of~~ not less than ~~One~~
17 ~~Hundred Dollars (\$100.00) and not~~ Two Hundred Fifty Dollars
18 (\$250.00) nor more than ~~One Thousand Dollars (\$1,000.00)~~ Two
19 Thousand Dollars (\$2,000.00) for each occurrence;

20 2. Liability in any action for damages, loss or injury suffered
21 or incurred by any person by reason of failure to deliver the
22 abstract pursuant to the provisions of this section. Any civil
23 judgment rendered pursuant to this paragraph may be enforced in the
24 same manner in which other civil judgments may be enforced; and

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3. Any administrative penalties and fines enforced by the
Oklahoma Abstractors Board.

SECTION 7. This act shall become effective November 1, 2023.

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