

An Act

ENROLLED SENATE
BILL NO. 979

By: Howard and Bullard of the
Senate

and

McEntire of the House

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; and updating statutory reference.

SUBJECT: Oklahoma Abstractors Act

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. "Abstract of title" ~~is~~ means a compilation in orderly arrangement of the materials and facts of record, in the office of the county clerk and court clerk, affecting the title to a specific

tract of land issued pursuant to a certificate certifying to the matters therein contained;

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

- a. an index in which notations of or references to any documents that describe the property affected are included, according to the property described or in which copies or briefs of all such documents that describe the property affected are sorted and filed according to the property described, which is compiled from the instruments of record affecting real property in the county offices and not copied or reproduced from any county index, and
- b. an index or files in which all other documents, pending suits affecting real property and liens, except ad valorem taxes and special assessments, are posted, entered, or otherwise included, according to the name of the parties whose title to real property or any interest therein or encumbrances thereon is affected, which is compiled from the instruments of record affecting real property in the county offices and not copied from any county index;

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

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

5. "Board" means the Oklahoma Abstractors Board;

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

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

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

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

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

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

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

2. The availability of any necessary base abstract; and

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

B. Failure of an abstractor to furnish an abstract, abstract extension, supplemental abstract or final title report within the following time periods shall constitute unnecessary delay, unless

the Board has previously determined the existence of extenuating circumstances:

1. For furnishing new abstracts:

- a. unplatted: twenty (20) business days, and
- b. platted: fifteen (15) business days; and

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

- a. unplatted: seventeen (17) business days, and
- b. platted: twelve (12) business days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. In addition to or in lieu of any censure, denial, suspension, or revocation of a certificate or permit, any person, firm, corporation, or other entity violating the provisions of the Oklahoma Abstractors Act shall be subject to a civil penalty ~~of~~ not less than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00) nor more than 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 4. AMENDATORY 1 O.S. 2021, Section 36, is amended to read as follows:

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

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

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

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

4. Make and prepare abstracts; and

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

B. The records in any city, county, or state office shall not be taken from the office to which they belong, for any reason, except that records may be taken from the office of the district

court clerk by an abstractor who is doing business within that county and has an approved bond on file with the county clerk for a period of time not to exceed twenty-four (24) hours after first giving proper receipt to the appropriate clerk or deputy.

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

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

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

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

G. Reliance solely on the county indexes in the preparation of an abstract of title shall be prohibited and subject to the penalties established in subsection B of Section 35 of this title

and shall not be a defense of liability for an error or omission in an abstract of title.

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

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

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

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

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

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

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

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

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

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

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

- a. the change from any prior rate for the same abstract, abstract extension, supplemental abstract or final title report,
- b. the fee charged by other holders of certificates of authority within the same county, in adjacent counties, and in counties with similar characteristics,
- 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 Dollars (\$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 contractual obligation to a mortgage company requires retention of the abstract by that mortgage company, then the purchaser shall have an opportunity to take possession of the abstract upon complete performance of the contractual obligations. If a duly licensed abstract company is holding or storing ~~the~~ any base or supplemental abstract or abstracts or a previously issued owner's policy of title insurance, upon written request from the owner or the authorized agent of the owner, pursuant to a current transaction, the licensed abstractor shall release the abstract ~~without unnecessary delay or~~ abstracts within three (3) business days of receipt of the written request or, in the case of a title insurance policy, shall release the owner's policy pursuant to subsection D of Section 5001 of Title 36 of the Oklahoma Statutes. All licensed abstractors and certificate of authority holders who refuse to do so shall be subject to the following:

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

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

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

Passed the Senate the 22nd day of May, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____