

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3009

By: Morgan (Fred) of the House

and

Crain of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to abstracting; amending 36 O.S. 2001, Section 5001, which relates to Title Insurers; clarifying reference to certain certifying authority; expanding authority to issue a policy of title insurance; stating effect of certain policy against loss or damage; clarifying additional method for issuance of title insurance policy; amending 74 O.S. 2001, Sections 227.10, 227.13, 227.18, 227.20, 227.21, 227.22, 227.25 and 227.28, which relate to the Oklahoma Abstractors Law; updating reference; modifying powers and duties of the State Auditor and Inspector; requiring certain notice by the State Auditor and Inspector; requiring a list of abstracting fees to be attached to certain application; requiring approval of abstracting fees by the State Auditor and Inspector; expanding items to be furnished by abstractors; specifying requirements for a valid order; modifying conduct subject to penalty; providing procedures for issuance of temporary certificate of authority; modifying reference relating to certain fee and bond; modifying certain conditions for actions taken on certificate or permit; requiring penalty under certain conditions; expanding certain term; directing the State Auditor and Inspector to make certain determination; requiring applicants to include certain fees with application; requiring certain notice by State Auditor and Inspector; specifying requirements for fees; providing for civil penalty; repealing 74 O.S. 2001, Section 227.16, which relates to persons, firms, corporations or other entities engaged in abstracting; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 5001, is amended to read as follows:

Section 5001. A. Any foreign or domestic stock insurer authorized by its corporate charter to engage in business as a title insurer shall be entitled to the issuance of a certificate of authority as a title insurer in this state upon meeting the applicable requirements of Article 6, ~~{Authorization of Insurers and General Requirements}~~, of the Oklahoma Insurance Code, except that existing title insurers may have their certificate of authority renewed by maintaining surplus in regard to policyholders of not less than Five Hundred Thousand Dollars (\$500,000.00).

B. A person engaged in the business of preparing or issuing abstracts of, but not guaranteeing or insuring, title to property, or a person acting only as agent for a title insurer, shall not be deemed to be a title insurer.

C. Every policy of title insurance or certificate of title issued by any company authorized to do business in this state shall be countersigned by some person, partnership, corporation or agency actively engaged in the abstract of title business in Oklahoma as defined and provided in ~~Title 1~~ the Oklahoma Abstractors Law or by an attorney licensed to practice in the State of Oklahoma duly appointed as agent of a title insurance company, provided that no policy of title insurance shall be issued in the State of Oklahoma except after:

1. After examination by an attorney licensed to practice in this state of a duly certified abstract extension or supplemental abstract prepared by an abstractor licensed in the county where the property is located, from a certified abstract plant in the county where the property is located or per a temporary certificate of authority as provided in Section 8 of this act, from the effective date of a prior owner's policy of title insurance issued by a title insurer licensed in this state provided by the insured pursuant to the policy at the time a valid order is placed pursuant to the provisions of the Oklahoma Abstractors Law brought forward to the

effective date of the abstract plant. Subject to the conditions and stipulations, the exclusions from coverage, exceptions from coverage and endorsements to the policy, any policy issued based on a prior owner's policy and a supplemental abstract shall insure the insured against loss or damage sustained or incurred by reason of unmarketability of title from sovereignty to the effective date of the policy, not to exceed the amount of insurance stated in the policy; or

2. If the previously insured owner does not provide a copy of the owner's policy of title insurance, then a title insurance policy may be issued after examination by an attorney licensed to practice in this state of a duly certified abstract of title prepared by a bonded and licensed abstractor as defined herein in the Oklahoma Abstractors Law.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 227.10, is amended to read as follows:

Section 227.10 ~~Sections 1 through 20~~ 227.10 through 227.30 of this ~~act~~ title shall be known and may be cited as the "Oklahoma Abstractors Law".

SECTION 3. AMENDATORY 74 O.S. 2001, Section 227.13, is amended to read as follows:

Section 227.13 In performing the duties imposed pursuant to the Oklahoma Abstractors Law, the State Auditor and Inspector shall have the following powers and duties:

1. To prescribe, promulgate, implement and enforce rules ~~and regulations~~ and make such orders as deemed necessary to implement all the provisions of the Oklahoma Abstractors Law including the duties imposed in this section; and

2. To hold examinations for applicants for abstract licenses ~~and to promulgate rules and regulations regarding such examinations as deemed proper; and~~

3. To issue abstract licenses, certificates of authority, ~~or~~ and permits in such form as deemed appropriate; ~~and~~

4. To ~~promulgate rules and regulations governing the issuing of~~ issue abstract licenses and certificates of authority to nonresidents, associations, corporations, and partnerships; ~~and~~

5. To suspend, revoke, or reinstate abstract licenses and certificates of authority previously issued, upon good cause shown; ~~and~~

6. To reprimand, place on probation, or require additional education of licensees and certificate holders upon good cause shown; ~~and~~

7. To ~~prescribe rules and regulations governing proceedings~~ necessary to perform the duties described in paragraphs 5 and 6 of ~~this section~~ establish administrative penalties and fines as provided for in Section 227.22 of this title for failure to furnish an abstract, abstract extension, supplemental abstract or final title report; and

8. To prescribe and impose such administrative penalties and fines as deemed proper to be assessed against licensees and certificate holders for the failure to pay the renewal fees or for the violation or noncompliance with any provision of the Oklahoma Abstractors Law or rule or order of the State Auditor and Inspector; ~~and~~

9. To cause the prosecution of any person who violates any of the provisions of the Oklahoma Abstractors Law; ~~and~~

10. To promulgate such rules and regulations governing the approval of organizations offering courses of study in real estate as are necessary for the administration of the Oklahoma Abstractors Law; ~~and~~

11. To establish minimum standards to be followed in the preparation of abstracts; ~~and~~

12. To establish a schedule of fees for applications for or renewals of certificates of authority, abstract licenses, or permits; ~~and~~

13. To establish the amount of the bond to be filed with applications for abstract licenses, certificates of authority, or permits; ~~and~~

14. To approve fee schedules of holders of certificates of authority, set criteria for determining what constitutes an excessive ~~abstracting~~ fee, and impose administrative penalties and fines for violations of approved fee schedules; and

15. To deposit all fees and fines collected to the credit of the State Auditor and Inspector Revolving Fund.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 227.18, is amended to read as follows:

Section 227.18 A. The State Auditor and Inspector shall issue a certificate of authority to any applicant who has complied with the provisions of the Oklahoma Abstractors Law. The certificate shall be in written form and shall indicate the county or counties in which the applicant may operate. The certificate shall be prominently displayed in the office of the certificate holder.

B. All certificates of authority issued pursuant to the provisions of the Oklahoma Abstractors Law shall expire annually on a staggered schedule established by the State Auditor and Inspector except the first certificates which may cover more than one (1) year but less than two (2) years. Renewal procedures are as follows:

1. Applications for renewal shall be made ninety (90) days prior to expiration and shall be accompanied by a renewal fee in an amount determined by the State Auditor and Inspector not to exceed the original application fee-; i

2. Any individual, firm, corporation, or other entity holding a certificate of authority who fails to apply for renewal and pay the renewal fee shall be notified by the State Auditor and Inspector no

later than sixty (60) days prior to expiration of the certificate of authority-;

3. The individual, firm, corporation, or other entity shall have thirty (30) days from the date of notification to file a renewal application-; and

4. The name of any individual, firm, corporation, or other entity failing to renew the certificate of authority shall be stricken from the records of the State Auditor and Inspector and said individual, firm, corporation, or other entity shall no longer engage in the business of abstracting in this state until authorized.

C. A list of abstracting fees shall 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. No certificate of authority shall be issued to any applicant until the list of abstracting fees is approved by the State Auditor and Inspector.

SECTION 5. AMENDATORY 74 O.S. 2001, Section 227.20, is amended to read as follows:

Section 227.20 A. All abstractors shall furnish abstracts ~~or copies,~~ abstract extensions, supplemental abstracts or final title reports as desired, to the persons applying therefor, in the order of ~~application~~ receipt of a valid order therefor, without unnecessary delay, and for reasonable compensation pursuant to the requirements of the Oklahoma Abstractors Law. 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:

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 ~~persons so engaged~~ 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 ~~so to do so, if tender of payment is made to them of the amount due for such abstract or copy, not exceeding the said legal fees, as soon as such amount is ascertained, or of a sum adequate to cover said amount before the ascertainment, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine~~ 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) nor more than One Thousand Dollars (\$1,000.00) ~~in any court of competent jurisdiction, and shall also be liable 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 ~~or copy~~, 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 State Auditor and Inspector.

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 227.20A of Title 74, unless there is created a duplication in numbering, reads as follows:

In the event that a holder of a certificate of authority has had repeated violations of the provisions of either Section 227.22 or 227.28 of Title 74 of the Oklahoma Statutes, the State Auditor and Inspector shall establish a procedure whereby a temporary certificate of authority may be issued to another holder of a certificate of authority licensed in this state to meet the consumer needs in the county wherein the violations occurred. The certificate shall be subject to the following:

1. The temporary certificate of authority shall be valid for ninety (90) days;

2. Additional ninety-day renewals may be granted if deemed appropriate;

3. The holder of a temporary certificate of authority shall provide a fee schedule for the county covered by the temporary certificate of authority. The fee schedule may or may not be the same as the current fee schedule of the holder of the certificate of authority receiving the temporary certificate of authority; and

4. The holder of a temporary certificate of authority shall not be required to furnish proof of the existence of an abstract plant required in Section 227.14 of Title 74 of the Oklahoma Statutes.

SECTION 7. AMENDATORY 74 O.S. 2001, Section 227.21, is amended to read as follows:

Section 227.21 Any person wishing to develop an abstract plant shall make application for a permit. The application shall be on a form prepared by the State Auditor and Inspector and shall be accompanied by the fee and the bond ~~set by the State Auditor and Inspector subject to the limits established in Section 5 of the Oklahoma Abstractors Law~~ as provided in Section 227.14 of this title. All permits shall expire annually. A permit holder who has not completed development of an abstract plant at the time the permit expires may apply for renewal of the permit. Applications for renewal must be made thirty (30) days prior to the scheduled expiration of the original permit and shall be accompanied by the renewal fee. The permit holder shall comply with the provisions of the Oklahoma Abstractors Law to obtain a certificate of authority after completion of the abstract plant.

SECTION 8. AMENDATORY 74 O.S. 2001, Section 227.22, is amended to read as follows:

Section 227.22 A. The State Auditor and Inspector 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 Law, if, after a hearing, the State Auditor and Inspector finds any one or more of the following conditions:

1. Any untrue statement in the application for a certificate of authority or permit; ~~or~~
2. The violation of or noncompliance with any provision of the Oklahoma Abstractors Law or rule, regulation, or order of the State Auditor and Inspector; ~~or~~
3. The obtaining of or attempt to obtain a certificate of authority or permit through fraud or misrepresentation; ~~or~~
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; ~~or~~

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

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 227.20 of 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 Law, ~~upon conviction, may~~ shall be subject to a civil ~~fine~~ penalty of not less than One Hundred Dollars (\$100.00) 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 9. AMENDATORY 74 O.S. 2001, Section 227.25, is amended to read as follows:

Section 227.25 A. An abstract license shall be issued by the State Auditor and Inspector to an applicant who:

1. Is eighteen (18) years of age or older; ~~and~~
2. Is of good moral character; ~~and~~
3. Has not been convicted of or pleaded guilty or nolo contendere to a felony or crime of moral turpitude in this state, another state, or a federal court; and
4. Has passed a test for abstractors required by the State Auditor and Inspector.

B. Each abstract license shall be valid for one (1) year. The State Auditor and Inspector shall set the fees for an abstract license and for renewal not to exceed Fifty Dollars (\$50.00).

SECTION 10. AMENDATORY 74 O.S. 2001, Section 227.28, is amended to read as follows:

Section 227.28 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; ~~and~~

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 ~~and abstracting~~, 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 of this title shall include all fees the applicant intends to charge for abstracts, abstract extensions, supplemental abstracts or final title reports. The State Auditor and Inspector 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 State Auditor and Inspector. 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 State Auditor and Inspector 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 State Auditor and Inspector 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 more than One Thousand Dollars (\$1,000.00) for each occurrence. The fine may be enforced in the same manner in which civil judgments may be enforced.

SECTION 11. REPEALER 74 O.S. 2001, Section 227.16, is hereby repealed.

SECTION 12. This act shall become effective July 1, 2007.

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