

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 3009

By: Morgan (Fred)

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; requiring compliance with certain services; providing definitions; prohibiting certain conduct related to real estate settlement; authorizing settlement agents or agencies to provide certain services; authorizing the Insurance Commissioner access to certain files for investigations; providing licensing requirements; providing additional requirements for settlement agencies; providing for forfeiture of license under certain conditions; requiring certain audits; requiring copies; requiring maintenance of records; providing requirements for settlement statements; requiring deposit of certain funds; specifying requirements; authorizing nondisbursement under certain conditions; authorizing the Insurance Commissioner to take certain action on licenses; providing reasons for taking action; requiring certain notice; providing hearing procedures; providing penalty; prohibiting public inspection of certain files without judicial authorization; allowing access to certain evidence; permitting issuance of duplicate licenses under certain conditions; requiring continuing education for settlement agents; providing requirements of continuing education program; providing for adoption of rules; providing for deposit of fees and fines to certain fund; amending 74 O.S. 2001, Sections 227.10, 227.11, 227.13, 227.15, 227.18, 227.20, 227.21, 227.22, 227.25 and 227.28, which relate to the Oklahoma Abstractors Law; updating reference; modifying certain definition; modifying powers and duties of the State Auditor and Inspector; providing for availability of certain instruments for reproduction; 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 of a duly certified abstract of title prepared by a bonded and licensed abstractor as defined herein; or

2. An abstract prepared by an abstractor licensed in the county where the property is located and from a certified abstract plant in the county where the property is located, from the effective date of a prior owner's policy of the title insurance, brought forward to the effective date of the abstract plant and examined by an attorney licensed to practice in this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36 of Title 5007, unless there is created a duplication in numbering, reads as follows:

In order to provide consumer protection safeguards relating to licensing, financial responsibility, and the handling of settlement funds existing licensing authorities in this state shall comply with the regulation of escrow, closing, or settlement services transactions involving the purchase of or lending on security or real estate located in this state as provided in Sections 2 through 8 of this act.

As applied to such regulations, the following definitions shall apply:

1. "Commissioner" means the Insurance Commissioner of the State of Oklahoma;

2. "Escrow" means written instruments, money, or other items deposited by a party with a settlement agency for delivery to other persons upon the performance of specified conditions or the happening of a certain event;

3. "Escrow account" means an account maintained at a financial institution for holding and disbursing funds to be paid to and on behalf of parties to the transaction and which are subject to annual audit;

4. "Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate including the sale, exchange, or mortgaging of real estate. These services include, but are not limited to, placing orders for title insurance, placing orders for abstracts, receiving money and issuing receipts for money received from any party to the transaction, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements, determining that all closing documents conform to the contract requirements of the parties, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the instructions of the lender have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents, and sending the recorded documents and the title policies to the appropriate parties;

5. "Financial institution" means a bank, savings bank, or savings and loan association insured by the Federal Deposit Insurance Corporation;

6. "Good funds" means:

- a. cash or wire transfers,
- b. certified checks, cashier's checks, and teller's checks, which have been drawn on a financial institution and for which a transaction code has been issued pursuant to and in compliance with a fully executed immediately available funds procedure agreement with such financial institution,
- c. uncertified funds in the amount of not more than One Thousand Five Hundred Dollars (\$1,500.00), including checks, traveler' checks, money orders, and negotiable orders of withdrawal; provided, multiple items shall

not be used to avoid the one-thousand-five-hundred-dollar limitation,

- d. uncertified funds in excess of One Thousand Five Hundred Dollars (\$1,500.00), when collected by the financial institution,
- e. United States Treasury checks,
- f. State of Oklahoma Warrants,
- g. checks issued by an Oklahoma municipality or county, and
- h. a check from a settlement agent;

7. "Party to the real estate transaction":

- a. with respect to a real estate transaction, means a lender, seller, purchaser, or borrower, and
- b. with respect to a corporate purchaser means any entity which is a subsidiary of or under common ownership with that corporate purchaser;

8. "Person" means an individual, company, insurer, limited liability company, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or other legal entity, Lloyd's association, and entity and association, group or department of underwriters;

9. "Received and deposited" means that good funds are in the possession of an employee or representative of the settlement agency and a record of receipt has been entered on the books of the settlement agency, but only if the funds are actually delivered for deposit to an escrow account at the financial institution in a timely manner, which shall not exceed three (3) business days as defined in Federal Reserve Board Regulations at CC, 12 CFE, Part 229, after the funds are received. If a settlement agent agrees to postponement of deposit for a period of time longer than three (3) business days after the date the funds are received, then the funds shall be deposited not later than the date set out in the written

instructions. In case of a wire transfer or other direct deposit, good funds shall be considered to be received and deposited when the financial institution notifies the settlement agent that the funds have been received;

10. "Settlement agent" means an individual who has been licensed by the Commissioner pursuant to the provisions of Sections 2 through 8 of this act, other than a party to the real estate transaction, who provides escrow, closing, or settlement services in connection with a transaction related to real estate in this state;

11. "Settlement agency" means a person other than an individual which employs settlement agents to provide escrow, closing, or settlement services in connection with a transaction related to real estate in this state;

12. "Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate including, but not limited to, a statement prescribed pursuant to the federal Real Estate Settlement Procedures Act of 1974 (RESPA) cited as 12 U.S.C., Section 2601 et seq.; and

13. "Transaction" means the purchase and sale, mortgage, exchange, or other act for which a settlement agency receives trust funds or documents or both.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5008 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this subsection, no individual shall hold himself or herself out to be, or act in the capacity of a settlement agent unless licensed by the Insurance Commissioner. A lender, seller, purchaser, or borrower may not contract with any person to act in the capacity of a settlement agent with respect to a real estate settlement unless that person is licensed as a settlement agent or is an attorney licensed to practice in this state acting in that capacity. A settlement agent

operating in compliance with the requirements of Sections 2 through 8 of this act or a party to the real estate transaction may provide escrow, closing, or settlement services and receive compensation for such services.

B. No person shall hold himself or herself out to be, or act in the capacity of a settlement agency unless licensed by the Commissioner. A lender, seller, purchaser, or borrower may not contract with any person to act in the capacity of a settlement agency with respect to a real estate settlement unless that person is licensed as a settlement agency. A settlement agency operating in compliance with the requirements of Sections 2 through 8 of this act or a party to the real estate transaction may provide escrow, closing, or settlement services and receive compensation for such services.

C. Upon reasonable notice to a settlement agent or settlement agency, the Commissioner, or designee of the Commissioner, shall have access to files of the settlement agent or settlement agency for inspection and copying during any investigation of a settlement agent or settlement agency.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An individual who is eighteen (18) years of age or older may apply to obtain a license as a settlement agent by submitting an application on a form prescribed by the Insurance Commissioner accompanied by a nonrefundable application fee of Thirty-five Dollars (\$35.00). Upon approval by the Commissioner of the application and payment of license fee of One Hundred Dollars (\$100.00), the Commissioner shall issue a license which authorizes the individual to act as a settlement agent. In addition:

1. The settlement agent license shall be valid for a period of one (1) year; and

2. A settlement agent license may be renewed annually upon application and approval by the Commissioner and upon payment of a renewal fee of Sixty Dollars (\$60.00).

B. A person seeking to obtain a license as a settlement agency shall submit an application on a form prescribed by the Commissioner accompanied by a nonrefundable application fee of Thirty-five Dollars (\$35.00). In addition:

1. Upon a determination by the Commissioner that the following requirements have been satisfied by the applicant and payment of license fee of One Hundred Dollars (\$100.00), the Commissioner shall issue a settlement agency license which authorizes the person to act as a settlement agency if:

- a. the applicant has obtained errors and omissions insurance from a company licensed to do business in this state in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per claim with an aggregate limit of Five Hundred Thousand Dollars (\$500,000.00) and with a deductible of not greater than Twenty-five Thousand Dollars (\$25,000.00); provided, in the event errors and omissions insurance is unavailable generally, the Commissioner shall promulgate rules for alternative methods to comply with the provisions of this subparagraph,
- b. the applicant has obtained a blanket fidelity bond covering all settlement agents employed by the settlement agency in an amount of not less than One Hundred Fifty Thousand Dollars (\$150,000.00) and with a deductible not to exceed fifteen percent (15%) of the bond penalty. The bond shall provide coverage to the buyer, seller, lender and title insurance underwriter insuring against loss due to employee



dishonesty, defalcation, or embezzlement. In addition:

- (1) the bond shall be executed by an insurance company authorized to do business in this state,
- (2) the required bond premium shall be paid by the settlement agency,
- (3) the bond term shall be for the same period as the term of the settlement agency license, and documentation of coverage shall be provided with the application for license renewal, and
- (4) a bonding company cancelling a bond shall give written notice of the cancellation to the Insurance Department. The cancellation shall not become effective until thirty (30) days after receipt of the written notice by the Insurance Department;

2. Title insurance underwriters and their wholly owned subsidiaries are exempt from the requirement of obtaining errors and omissions insurance or a blanket fidelity bond;

3. The settlement agency license shall be valid for a period of one (1) year; and

4. A settlement agency license may be renewed annually upon application and approval by the Commissioner and upon payment of a renewal fee of Sixty Dollars (\$60.00).

C. Failure to comply with the errors and omissions and bonding requirement shall constitute grounds for immediate forfeiture of the settlement agency license.

D. At least once each twelve-month period every settlement agency shall cause an audit of their escrow accounts to be conducted by an independent certified public accountant. In addition:

1. The settlement agency shall provide a copy of its audit report to the Commissioner not later than sixty (60) days after the date on which the settlement agency receives the audit; and

2. A settlement agency that is a licensed title insurance agency shall also provide a copy of the audit report to each title insurance company it represents. In lieu of such annual audit, a settlement agency that is licensed as a title insurance agent may allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations promulgated by the Insurance Department of this state, as appropriate, at least once each consecutive twelve-month period. Each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority not later than sixty (60) days after the date on which the analysis is completed. With consent of the title insurance agent, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting separate analysis.

E. The settlement agency shall maintain sufficient records of the business affairs related to real estate regulated pursuant to Sections 2 through 8 of this act so that the Commissioner may adequately ensure that the settlement agent is in compliance with the requirements of Sections 2 through 8 of this act. The settlement agency shall retain records pertaining to each settlement handled for not less than of five (5) years after the settlement transaction is completed. The Commissioner may prescribe the specified record entries and documents to be kept.

F. Every settlement agency shall keep, at the place of business of the licensee, the usual and customary records pertaining to escrow, closing, and settlement transactions. All records as to any particular transactions shall be kept available and open for inspection by the Commissioner or a designee of the Commissioner at

any time during business hours for three (3) years immediately following the date of completion of the transaction.

G. All settlement statements for transactions related to real estate regulated pursuant to Sections 2 through 8 of this act shall be in writing and the settlement agent and settlement agency shall be identified by name and business address.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5010 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. All funds deposited with the settlement agency in connection with an escrow, settlement, or closing shall be deposited in an escrow account in a financial institution not later than the close of the next business day, in accordance with the following requirements:

1. The funds shall be the property of the person entitled to them pursuant to the provisions of the escrow, settlement, or closing instructions and shall be segregated in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements pursuant to which the funds are accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. A settlement statement which has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. All funds received or deposited with the settlement agency shall be good funds and must be received and deposited before any disbursements may be made.

D. Although funds are designated as good funds, a settlement agency is not required to disburse those funds if reasonable

business judgment would indicate that the funds may not be collected or that there is a dispute concerning disbursement.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5011 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may suspend, revoke, refuse to issue or renew a license, or place on probation or censure any holder of a license issued pursuant to the provisions of Sections 2 through 8 of this act, or impose any combination of these actions for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
2. Making substantial misrepresentations or false promises in the conduct of business as a settlement agency or through advertising;
3. Committing any act or cause for which issuance of the license could have been refused had it existed and been known to the Commissioner at the time of issuance;
4. Having been convicted or pleaded guilty or nolo contendere in a court of competent jurisdiction after the issuance of the license in this or any other state of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense;
5. Failing to pay the fees or fines imposed pursuant to the provisions of Sections 2 through 8 of this act;
6. Failing to comply with an order lawfully issued pursuant to the provisions of Sections 2 through 8 of this act;
7. Giving or receiving any fee, rebate, discount, or other thing of value either directly or indirectly for the referral of escrow, closing, or settlements services;

8. Giving or receiving any portion, split, or percentage of any charge made or received for settlement services other than for services actually performed;

9. Having knowledge that a violation by an individual licensee was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the settlement agency and the violation was neither reported to the Commissioner nor corrective action taken; and

10. Having violated any provision of Sections 2 through 8 of this act.

B. The Commissioner shall notify the applicant or licensee and advise the applicant or licensee of a denial of a license or renewal of a license in writing, of the reason for the denial or nonrenewal. A hearing may be requested according to the following:

1. The applicant or licensee may make written demand upon the Commissioner within thirty (30) days of the date the notification from the Commissioner for a hearing before the Commissioner or an independent hearing examiner to determine the reasonableness of the action taken by the Commissioner; and

2. The hearing shall be heard within a reasonable time period and shall be held pursuant to the provisions of the Administrative Procedures Act.

C. In addition, to the penalties imposed in subsection A of this section, the Commissioner is authorized to levy a civil penalty for any violation of the provisions of Sections 2 through 8 of this act of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence. This penalty may be enforced in the same manner in which civil judgments may be enforced.

D. The Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by Sections 2 through 8 of this act and the Insurance Code against any

person who is under investigation for or charged with a violation of Sections 2 through 8 of this act and the Insurance Code even if the license of the person has been surrendered or has lapsed by operation of law.

E. Files pertaining to investigations or legal matters which contain information concurring with a current and ongoing investigation of allegations of violations of the Oklahoma Insurance Code by a licensed agent shall not be available for public inspection without proper judicial authorization; however, a licensee under investigation for alleged violations of the Oklahoma Insurance Code, or against whom an action for alleged violations of the Oklahoma Insurance Code has been commenced, may view evidence and complaints pertaining to the investigation, other than privileged information, at reasonable times at the office of the Commissioner. All qualification examination materials, booklets and answers for any license authorized to be issued by the Commissioner under any statute shall not be available for public inspection.

F. The Commissioner may issue a duplicate license for any lost, stolen or destroyed license issued pursuant to this act upon an affidavit of the licensee prescribed by the Commissioner concerning the facts of such loss, theft or destruction.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5012 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each settlement agent shall complete a program of continuing education established by the Insurance Commissioner in subject areas designed to enhance technical and general knowledge in the escrow, closing, and settlement services process. The program shall be in accordance with the following:

1. The Commissioner may establish such program of continuing education on an annual or biennial basis;

2. The Commissioner shall establish the number of hours required to comply with continuing education requirement, not to exceed ten (10) clock hours in any one (1) calendar year;

3. The Commissioner has sole authority to approve courses and providers of continuing education;

4. Each settlement agency shall be allowed to provide continuing education to settlement agents as required by this section, provided, that such continuing education meets the general standards for education otherwise established by the Commissioner;

5. Each provider of continuing education programs shall, after approval by the Commissioner, submit an annual fee of Two Hundred Dollars (\$200.00). Public-funded educational institutions shall be exempt from this subsection; and

6. Settlement agents who are sixty-five (65) years of age or older and who have at least twenty (20) years of experience as a settlement agent shall be exempt from the provisions of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5013 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall adopt such rules as are necessary to implement the provisions of Sections 2 through 8 of this act.

B. All fees and fines received pursuant to the provisions of Sections 2 through 8 of this act by the Commissioner shall be paid into the State Treasury to the credit of the State Insurance Commissioner Revolving Fund for the purpose of implementing the provisions of Sections 2 through 8 of this act.

SECTION 9. 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 10. AMENDATORY 74 O.S. 2001, Section 227.11, is amended to read as follows:

Section 227.11 As used in the Oklahoma Abstractors Law:

1. "Abstract of title" is 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 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 ~~or~~, 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. "Certificate of authority" is 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 State Auditor and Inspector.

4. "Permit" is the authorization to build an abstract plant in a specific county.

5. "Abstract license" is 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.

SECTION 11. 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 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 civil penalties 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 such 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, regulation, 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 penalties for violations of approved fee schedules; and

15. To set criteria for determining what constitutes appropriate times within which abstracts, abstract extensions, supplemental abstracts, or final title reports are to be furnished; and

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

SECTION 12. AMENDATORY 74 O.S. 2001, Section 227.15, is amended to read as follows:

Section 227.15 In addition to the bond required any person, firm, corporation, or other entity not engaged in the business of abstracting on January 1, 1984, desiring to enter into the business of compiling or abstracting titles to real estate in any of the counties of the State of Oklahoma from and after the passage of the Oklahoma Abstractors Law, shall have for use in such business an independent set of abstract books or other system of indexes compiled from the instruments of record affecting real estate in the office of the county clerk, and not copied from the indexes in said office, showing in a sufficiently comprehensive form all instruments affecting the title to real property on file ~~or~~, of record and currently available for reproduction in the office of the county clerk and court clerk of the county wherein such business is conducted.

SECTION 13. 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-;

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 Office of 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 Office of the State Auditor and Inspector.

SECTION 14. 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, 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, if applicable;
2. The availability of any necessary base abstract; and
3. An up-front commitment to pay for either the order or a stated cancellation fee amount.

B. Unless the delay in furnishing the abstract, abstract extension, supplemental abstract, or final title report is beyond the control of the abstractor as a result of an extended illness, rapid increases in orders, or an act of God, 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, whose business is hereby declared to stand upon a like footing with that of common carriers, who shall refuse so to do, ~~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 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, for each occurrence~~ and shall also be liable 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.

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

SECTION 15. 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 multiple 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; and

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.

SECTION 16. 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 17. 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 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 18. 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 plead 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 19. 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 fee is determined to be excessive or is 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 reports,
- 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 or in lieu of 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 20. REPEALER 74 O.S. 2001, Section 227.16, is hereby repealed.

SECTION 21. This act shall become effective July 1, 2007.

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