

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 979

By: Howard and Bullard of the  
Senate

and

6  
7 McEntire of the House  
8  
9

10 COMMITTEE SUBSTITUTE

11 An Act relating to abstracting; amending 1 O.S. 2021,  
12 Sections 21, 32, 35, 36, 41, and 43, which relate to  
13 the Oklahoma Abstractors Act; modifying definitions;  
14 providing exception for determination of certain  
15 unnecessary delay; increasing certain civil penalty;  
16 requiring notice to Oklahoma Abstractors Board for  
17 certain noncompliance; requiring response to notice  
18 within specified time period; defining term;  
19 increasing certain civil penalty; modifying  
20 definition; prohibiting reliance on county index for  
21 preparation of abstract of title; clarifying civil  
22 penalty for certain violation; increasing certain  
23 civil penalty; requiring release of certain abstract  
24 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:

1 Section 21. As used in the Oklahoma Abstractors Act:

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

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

- 15 a. an index in which notations of or references to any  
16 documents that describe the property affected are  
17 included, according to the property described or in  
18 which copies or briefs of all such documents that  
19 describe the property affected are sorted and filed  
20 according to the property described, which is compiled  
21 from the instruments of record affecting real property  
22 in the county offices and not copied or reproduced  
23 from any county index, and  
24

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

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

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

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

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

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

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

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

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

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

- 17       1. A complete and accurate legal description or a complete and  
18 accurate address, as applicable;
- 19       2. The availability of any necessary base abstract; and
- 20       3. An up-front commitment to pay for the order either upon  
21 delivery or other payment conditions agreed to by the parties to the  
22 transaction or a stated cancellation fee amount.

23       B. Failure of an abstractor to furnish an abstract, abstract  
24 extension, supplemental abstract or final title report within the

1 following time periods shall constitute unnecessary delay, unless  
2 the Board has previously determined the existence of extenuating  
3 circumstances:

4 1. For furnishing new abstracts:

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

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

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

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

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

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

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

21 2. Liability in any action for damages, loss or injury which  
22 any person may suffer or incur by reason of failure to furnish such  
23 abstract, abstract extension, supplemental abstract or final title  
24 report pursuant to the provisions of this section. This penalty may

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~~ Internet or  
23 any other such forum by any company holding a permit to build an  
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1 abstract plant is prohibited, and a violation of this subsection  
2 shall be 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 solely on the county indexes in the preparation of  
11 an abstract of title shall be prohibited and subject to the  
12 penalties established in subsection B of Section 35 of this title  
13 and shall not be a defense of liability for an error or omission in  
14 an 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;

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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 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

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

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

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

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

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

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