

**CONTACT PERSON:**

Monica Wittrock, Chairman (405) 232-3258

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. §253(D):**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:10-1-1. Purpose**

The rules of this chapter have been adopted for the purpose of implementing the Oklahoma Abstractors Act, Title 1, of the Oklahoma Statutes. These rules have been promulgated in order to establish criteria, fees, and procedures for the granting of certificates, permits, and licenses.

**5:10-1-2. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Abstractor " means the holder of a certificate of authority, temporary certificate of authority, permit, or abstract license.

"Act " means the Oklahoma Abstractors Act.

"Board " means the Oklahoma Abstractors Board.

"Licensee" means a person who holds a current abstract license.

**5:10-1-3. Authority, interpretation, and severability of rules**

The rules in this Chapter are adopted pursuant to the provisions the Oklahoma Abstractors Act, Title 1 of the Oklahoma Statutes, and the Administrative Procedures Act. Should a court having jurisdiction or the Attorney General of Oklahoma find any part of the rules of this Chapter to be inconsistent with the provisions of law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended and the partial or total invalidity of any section or sections of this Chapter shall not affect the valid sections.

**SUBCHAPTER 3. ABSTRACT LICENSES, CERTIFICATES OF AUTHORITY, AND PERMITS**

**5:10-3-1. Who must hold abstract license**

(a) A holder of a certificate of authority or permit who is an individual or partner actively engaged in the process of preparing abstracts, shall also be required to have an individual abstract license.

(b) Any person employed by a holder of a certificate of authority or permit for the purpose of searching county records or compiling abstracts shall hold an abstract license. An employee whose sole function is to put the work product of others into typewritten or other readable form shall not be required to hold an abstract license.

(c) For all or any part of calendar year 2008 and for the following calendar years each initial application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00).

(d) For all or any part of calendar year 2008 and for the following calendar years each renewal application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00).

**5:10-3-2. Examinations for abstract license**

(a) The test for an abstract license shall be given at least quarterly and at such other times as and at such locations as designated by the Board. The Board shall set the test dates for the calendar year at the first regular meeting of the Board of each calendar year.

(b) Tests shall be graded either pass or fail. Seventy per cent (70%) of the questions must be answered correctly to pass. If failed, the test can be taken again in thirty (30) days, not to exceed three times in a calendar year.

**5:10-3-3. Bonds required for permits and certificates of authority**

**(a) County records bond.**

(1) Each application for a certificate of authority shall be accompanied by a bond concerning county records only.

(2) Each application for a permit shall be accompanied by a bond concerning county records only.

(3) The bond shall be valid for one (1) year and extend coverage to the various county offices for damages by reason of mutilation, injury, or destruction of any record or records of the several county offices to which the applicant may have access.

(4) If a surety bond is provided it shall be issued by a surety company licensed to do business in the State of Oklahoma.

(5) The original bond shall be filed in the office of the Board. The Board or a person designated by the Board to perform such duties shall mail a certified copy of the bond to the County Clerk's office for filing.

**(b) Errors and omissions bond or insurance.**

(1) Each application for a certificate of authority shall be accompanied by a bond or insurance to pay damages for possible errors in abstracts prepared by the holder of the certificate of authority.

(2) If coverage for damages for possible errors in abstracts prepared by the holder of a certificate of authority will be by bond, then the bonds shall be on forms either prescribed by, or approved in advance by the Board.

(3) Upon compliance with the provisions of Section 27 of Title 1 of the Oklahoma Statutes and the rules set out in this Chapter the Board shall accept either a personal or surety bond by issuing a written statement of acceptance.

(4) A personal bond must provide that the certificate of authority or permit holder be the obligor and that the Board be the obligee. The personal bond, conditioned on the obligor performing its duties without error, must be accompanied by either cash or a Certificate of Deposit delivered to the Board.

(5) A Certificate of Deposit must be issued by a federally insured financial institution in the State of Oklahoma and must have a maturity term of a minimum of one year.

(A) The Certificate of Deposit shall on its face show either the Board as its holder or it shall be endorsed in favor of the Board.

(B) The original Certificate of Deposit shall be delivered to the Board with an executed personal bond form.

(6) Interest on such Certificate of Deposit shall be paid to the obligor. Payment to a third party will be allowed on a personal bond upon presentation of either a final order of a District Court of the State of Oklahoma finding that the conditions of the bond have not been met, or upon written settlement with the obligor. Prior to payment unless the obligor presents to the Board either a surety bond or an alternative method of securing the personal bond equal to the amount of the claim against the bond the Board shall take action to suspend the certificate of authority of the obligor.

(7) The personal bond and a facsimile of the Certificate of Deposit become part of the file of the holder of the certificate of authority or permit for whom they are given. These documents are available for examination and copying by the public.

#### **5:10-3-4. Application fees for permits, certificates of authority, and renewals**

For all or any part of calendar year 2008 and for the following calendar years a separate application and fee shall be submitted for each certificate of authority and permit, or renewal thereof, for each county in which the applicant desires to do business. The fee shall be as follows:

- (1) County Population of less than 10,000 - \$400.00
- (2) County Population of 10,000 but less than 30,000 - \$800.00
- (3) County Population of 30,000 but less than 60,000 - \$1,200.00
- (4) County Population of 60,000 but less than 100,000 - \$1,600.00
- (5) County Population of 100,000 but less than 200,000 - \$2,400.00
- (6) County Population of 200,000 or more - \$3,200.00

#### **5:10-3-5. Licensing associations, corporations, partnerships**

An applicant for permit or certificate of authority issued to an association, partnership, corporation or other entity shall be required to comply with the same laws, rules, regulations, and orders as individuals. Such entities shall designate in writing an individual as service agent to receive service of summons and notice of hearings or state on the application form that it will accept service at its business address on the application form.

#### **5:10-3-6. Transfer of certificate of authority**

An applicant for a transfer of a certificate of authority by an individual, association, partnership, corporation, or other entity shall be required to comply with the same laws, rules, regulations, and orders applicable to the previous holder of the certificate of authority. The applicant shall also provide an affidavit as to due diligence efforts made to determine that the abstract plant acquired meets all the requirements of the Act.

#### **5:10-3-7. Licensing nonresidents**

(a) Anyone who is not a resident of the State of Oklahoma but who obtains a certificate of authority, permit or abstract license shall:

- (1) give written consent that actions, suits at law and administrative proceedings may

be commenced against such nonresident in any county in this state where any cause of action may arise or be claimed to have arisen out of any actions occurring as a result of alleged activities under the Act. Such consent shall be applicable to a nonresident, his agents or employees; and

(2) appoint, in writing, a service agent in the State of Oklahoma to receive service of summons or notice of hearing.

(b) A nonresident shall designate a service agent in accordance with provisions of Section 2004 of Title 12 of the Oklahoma Statutes.

**5:10-3-8. Filings prior to effective date of rule**

Any application for renewal of a certificate or license received prior to the effective date of these rules shall be considered timely filed and the certificate or license for which renewal is being applied for shall continue in full force and effect until revoked or renewed by the Board.

**5:10-3-9. Forms**

**(a) Certificate of authority.**

(1) The Board shall prescribe the initial application form for a certificate of authority to be used when an entity applies for a certificate of authority for the first time.

(2) The Board shall prescribe the form to be used for a temporary certificate of authority.

(3) The Board shall prescribe the renewal form to be used for the annual renewal of the certificate of authority.

(4) The Board shall prescribe the transfer form to be used when the ownership of holder of a certificate of authority changes.

**(b) Permit.**

(1) An application for a permit prescribed by the Board shall be used when an applicant desires to engage in the business of abstracting and does not hold a current certificate of authority in the appropriate county.

(2) When applying for a permit the applicant must include an affidavit on a form prescribed by the Board prepared by the appropriate District Court Clerk and County Clerk certifying the completeness or incompleteness of the county records.

(3) A general statement of the law, and instructions directing how the forms should be completed shall be included with each application for a permit.

(4) If the affidavits of the District Court Clerk or the County Clerk filed with the application for permit indicate that the records in either office are incomplete or if after an administrative hearing, it is determined that the records in those offices are incomplete; then the applicant shall obtain all those records otherwise unavailable from the offices of the District Court Clerk and County Clerk prior to the issuance of the permit.

(5) The applicant for a permit shall provide the Board with proof that each person engaged in the search of county records for the purpose of establishing a plant is a holder of an abstract license.

**(c) License.** An application for an abstract license is used when an individual applies for an abstract license for the first time. A renewal form is used for the annual renewal of an abstract license.

**(d) Renewal.** An application for renewal shall be submitted on an application for renewal form prescribed by the Board with the appropriate fee.

(e) **Bonds.** A certificate of authority holder wishing to take advantage of the alternative pursuant to rule 5:10-3-3 of this Chapter, must use the Board bond form unless prior approval is received from the Board for the use of another form.

(f) **Other forms.** The Board shall provide such other forms as necessary to implement the provisions of the Act.

## SUBCHAPTER 5. REGULATION OF LICENSEES, CERTIFICATE HOLDERS, AND PERMIT HOLDERS

### 5:10-5-1. Inspections

(a) The Board shall cause inspections of records and premises of all permit holders and certificate holders at the discretion of the Board.

(b) Upon request from the Board, a permit holder or certificate holder shall provide access to the records and premises of their business. Failure to do so in a timely manner shall constitute an offense subject to fine, suspension, revocation or such other sanction as may be determined by law.

(c) Certificate holders shall maintain for five (5) years a copy of the certificate page of such abstract, evidence of research, the certificate page of any abstract used for duplication, and billing information.

### 5:10-5-2. Penalties for failure to pay renewal fees

The Board shall assess and collect penalties against licensees and certificate holders for the failure to pay renewal fees. Such penalties shall be posted in the Board office. If the amount of the penalty is changed, thirty (30) days notice shall be given before the change shall be effective.

### 5:10-5-3. Preparation of abstracts

(a) **Type of abstract.** A certificate of authority holder shall cause the preparation of an abstract which shall cover a fee simple estate, or upon the request of a customer, a fee simple estate less and except oil, gas, coal, and other mineral interests. The abstract certificate, caption sheet, or both shall reflect the nature of the abstract along with an appropriate disclaimer regarding that which is excluded.

(b) **Contents of abstract.** For the time period covered by the certification, an abstract shall include the following:

(1) all instruments that have been filed for record or have been recorded in the Office of the County Clerk which legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;

(2) the records of the District Court Clerk and the County Clerk that disclose executions, court proceedings, pending suits, liens of any kind affecting the title to said real estate;

(3) judgments or transcripts of judgments against any of the parties appearing within the chain of title of the abstract, either indexed and docketed prior to October 1, 1978, on the judgment docket of the District Court Clerk or filed for record or recorded on or after October 1, 1978, in the Office of the County Clerk of said county; and

(4) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof

unredeemed, tax deeds, unpaid special assessments certified to the Office of the County Treasurer, due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon and unpaid personal taxes which are a lien on said real estate.

(c) **Federal court records.** For property located in Muskogee, Okmulgee, Oklahoma, and Tulsa counties, for the time period covered by the certification, an abstract or special certificate shall include the records of the Clerk of the United States District Court and the records of the Clerk of the United States Bankruptcy Court in Muskogee Okmulgee, Oklahoma, and Tulsa counties, respectively, that disclose:

(1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property;

(2) judgments or transcripts of judgments against any of the parties appearing within the chain of title of the abstract, either indexed and docketed prior to October 1, 1978 on the judgment docket of the Clerk of the respective United States District Court or filed for record or recorded on or after October 1, 1978 in the office of the County Clerk of the respective county, affecting title to said real estate.

(d) **Other services.** Any service performed by the holder of a certificate of authority that does not meet the standard established in the Act and the rules of the Board shall not be designated an "abstract" and shall not include an abstract certificate.

#### **5:10-5-4. Minimum standards for preparation of abstracts**

Copies of documents included in an abstract of title prepared by a holder of a Certificate of Authority shall be as legible as the source document on file in the offices of the County Clerk or the District Court Clerk except for source documents larger than 8 ½" x 14".