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JULY "MESSAGE FROM THE BOARD"

It is truly an honor to serve as the District 3 representative to the Oklahoma Abstractors Board and to have the opportunity to make a difference to our industry. After having been in private legal practice for many years, representing banks, mortgage companies, realtors, developers, and buyers and sellers of land, I experienced first-hand the need for quality abstractors, coupled with a strong commitment by the industry to provide the services I needed, when I needed them. Quality and expeditious title searches by qualified abstractors is at the very crux of economic development in our state; take away the solid documentation requirements, the critical search, and the vital analysis of information about the title and the transaction, and you take away the very foundation upon which our economy succeeds.

In his book, "The Mystery of Capital", Hernando DeSoto credits the success of the United States squarely upon the documentation of ownership of land in contrast to third world countries:

But they hold these resources in defective forms – houses built on land whose ownership rights are not adequately recorded, unincorporated business with undefined liability, industries located where financiers and investors cannot see them. Because these rights to these possessions are not properly documented, these assets cannot be readily turned in to capital, cannot be traded outside of narrow local circles where people know and trust each other, and cannot be used as a share against an investment.

In the West, by contrast, every parcel of land, every building, every piece of equipment, or store of inventories is represented in a property document that is a visible sign of a vast hidden process that connects all these assets to the rest of the economy . . . The single most important source of funds in the United States is a mortgage on the entrepreneur's house. These assets can provide a link to the owner's credit history, an accountable address for the collection of debts and taxes, the basis for the creation of reliable and universal public utilities, and a foundation for the creation of securities (like mortgage-backed bonds) that can be rediscounted and sold on the secondary market. By the process, the West injects life into assets and makes them generate capital.

I am currently chairman of the Rules Committee, the group that is charged with the responsibility of drafting rules and procedures for carrying out the Oklahoma Abstractors Act. The permanent rules of the Oklahoma Abstractors Act, codified as Title 5 of the Oklahoma Administrative Code, Rules of the Oklahoma Abstractors Board, will go in to effect on July 15, 2009. A copy of the Rules can be found on this website.

While we are exploring many issues to deal with problems of the past and opportunities for the future, one of the concepts contained within the Act keeps coming back to me as a reoccurring theme. I have

recently become very interested in the concept that Oklahoma abstractors are bound by the characterization as a “common carrier”. Title 1, Okla. Stat. Sec. 32(C) provides:

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

(The remaining text of this section includes the penalties for failure to complete an order within the statutory time.)

So what does that mean, to be “upon a like footing with that of common carriers”? We typically think of a common carrier to be in the nature of railroads, airlines, telegraph, telephone, and other transporters of goods or services. These days, that concept has been extended to internet providers, hotel keepers, roller coaster operators, and storage facilities.

Typically, a common carrier is a business that transports people, goods or services and offers its services to the general public under a license or authority provided by a regulatory body. A common carrier holds itself out to provide service to the general public without discrimination for the “public convenience and necessity.” A common carrier must further demonstrate to the regulator that it is “fit, willing and able” to provide those services for which it is granted authority. Rates are published to the public and most often approved by regulators.

In addition, a common carrier is legally bound to provide all services so long as there is enough capacity, the fee is paid, and no reasonable grounds to refuse to do so exist. A common carrier that unjustifiably refuses to provide the regulated service may be sued for damages.

How does this apply to the abstracting industry? In my opinion (not endorsed as the opinion of the Oklahoma Abstractors Board), this means that as abstractors we should adhere to the following principals, based upon Oklahoma’s own common carrier statutes found in Title 13 of the Oklahoma Statutes, the concepts contained with the Oklahoma Abstractors Act, and common law principles pertaining to common carriers. As a “common carrier”, an Oklahoma abstractor is bound:

1. To process orders received from all members of the public the same, regardless of the source of the order, whether the order comes from a local realtor, an out-of-state firm, or the competitor down the street. Stated another way, abstractors should comply with the requirement of Section 32 requiring abstractors to process orders “in the order of receipt”, the traditional “first in, first out” for similar types of orders placed with their operations, recognizing that there may be legitimate reasons to deny an order, such as suspected illegal activity or inability to pay.
2. To care for all customers with “civility and give them a reasonable degree of attention”, with privacy and respect and to treat all orders as confidential business documents of the customer.
3. To charge reasonable rates commensurate with the services provided, which may include payment in advance. However, an abstractor should not extract more than is reasonable in terms of “an up-front commitment to pay for the order”.
4. To avoid intercepting an order belonging to another abstractor or customer and commandeering the order for itself.
5. To document any “necessary” delays that would prevent an abstractor from complying with the time frames for furnishing abstracts set forth in Section 32 (B) and communicate such delays to the customer.

Simply stated, it is our obligation under the statute to treat all of our customers fairly, with civility, and with the highest level of care and quality. When I made application to the Governor to be appointed for this position, it was my goal to have a positive influence in our industry in this way. I am so privileged to work

with eight other board members and three staff members who have that same goal at the heart of their involvement with the Oklahoma Abstractors Board.

I'm happy to be of service to the public and to hear from you.

Regards,

Monica Wittrock