

OKLAHOMA
ABSTRACTORS
BOARD

TITLE 5

RULES AND REGULATIONS

Effective August 27, 2015

**TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 2. ADMINISTRATIVE OPERATIONS**

SUBCHAPTER 1. GENERAL PROVISIONS

5:2-1-1. Purpose

The Rules of this Title are provided for the purpose of interpreting and implementing the Oklahoma Abstractors Act, as set out in Title 1 of the Oklahoma Statutes, which established the Oklahoma Abstractors Board and conferred upon the Board the responsibility for administering and enforcing the Act.

5:2-1-2. Definitions

In addition to the terms defined in the Oklahoma Abstractors Act, the definitions of the following words and terms shall be applied when implementing the Act and rules adopted by the Board:

"**Abstractor**" means the holder of an abstract license, certificate of authority, or temporary certificate of authority.

"**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, 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 including any satellite offices for the county clerk or district court clerk. Such records shall consist of:

(A) a "**land 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 and recorded in the county offices and not copied or reproduced from any county index:

(B) a "**name index**" compiled from the following:

- (i) records from the court clerk sorted or filed according to the names of the parties listed in the pending suits which shall include but not be limited to probates, divorces, dissolutions of marriage, guardianships, and civil suits affecting real property; and,
- (ii) records from the county clerk sorted or filed according to the names of the parties listed in the documents which shall include but not be limited to liens, tax warrants, statements of judgment, and any other documents which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrance thereon which are filed, recorded, and currently available for reproduction in the office of the county clerk. The index shall be compiled from instruments of record affecting real property in the office of the county clerk and not copied from any county index.

"Billing Information" means a copy of an invoice reflecting all abstract related charges.

"Compile" means to arrange in an orderly and logical manner all recorded instruments relating to a particular chain of title of real property.

"Employee" means a person who is compensated, directly or indirectly, by a holder of a certificate of authority, permit, or temporary certificate of authority, who performs duties regulated by the Act.

"Final title report" means the document resulting from the final title search required to be conducted by a certificate of authority holder in the county where the property is located prior to the issuance of a title insurance policy pursuant to the rules of the Oklahoma Insurance Department and shall include all information as mandated by Section 11-5-3 of these rules.

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

"Supervision" means all work of an employee must be supervised within the authorized activities of a certificate of authority holder or a permit holder, respectively.

(A) Supervision of an abstract licensee by a certificate of authority holder means the oversight of the licensee to search or remove from county offices county records, summarize or compile copies of such records, maintain an independent set of abstract books or indexes, or compile an abstract of title for certification.

(B) Supervision of an abstract licensee by a permit holder means the oversight of the licensee to build, construct or develop an abstract plant and activities directly related thereto pursuant to 5:11-7-3 of these rules.

(C) Supervision of a non-licensed employee means the oversight of any person who is employed by a holder of a permit or certificate of authority who performs the activities set forth in 5:11-3-1(b) of these rules.

"Upfront commitment to pay" may be:

(A) A written document whether by e-mail, facsimile, contract of sale, or other written instruction by a party to the transaction that agrees to pay the invoice upon delivery, unless the certificate holder:

- (i) notifies the customer within two (2) full business days that other payment terms must be satisfied, or
- (ii) the certificate holder has a uniform payment policy posted at its office.

(B) The acceptance of an order from a party to the transaction whether by e-mail, facsimile, contract of sale, or other written or oral instruction by a certificate holder, and the holder proceeds to complete the requested abstracting service.

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

5:2-3-1. Powers and duties

The powers and duties of the Oklahoma Abstractors Board are set forth in the Oklahoma Abstractors Act, Title 1 of the Oklahoma Statutes.

5:2-3-2. Principal office, hours of operation, and official website

(a) The principal office of the Oklahoma Abstractors Board is the address listed on the OAB's website, www.abstract.ok.gov.

(b) The office is open Monday through Friday from 8:00 A.M. until 5:00 P.M. except Saturday, Sunday, and legal holidays.

(c) The official website of the Oklahoma Abstractors Board is www.abstract.ok.gov pursuant to assignment from the Oklahoma Office of State Finance.

5:2-3-3. Communications

All communications to the Board which are required to be in writing, shall be:

- (1) either handwritten, typewritten, or submitted by electronic transmission;
- (2) signed by the person submitting the communication; and
- (3) addressed to the Board at the principal office of the Board.

5:2-3-4. Availability of records; copies

(a) Copies of rules, regulations, final orders, decisions, and opinions relating to abstract licenses, certificates of authority, temporary certificates of authority, and permits will be available for public inspection at the principal office during stated office hours.

(b) Copies of the official records may be made and certified by the Board or by a person designated by the Board to perform such duties upon prepayment of the copying fee as authorized in the Oklahoma Open Records Act, which shall be posted in the office of the Board.

(c) All material in the office of the Board which is protected from publication by either State or Federal law shall not be released.

5:2-3-5. Adoption, amendment, or repeal of rule

(a) In addition to the powers of the Board to adopt, amend, or repeal a rule, any person who is not a member of the Board may ask the Board to promulgate, amend, or repeal a rule.

(b) Such request shall be in writing and filed with the Board. The request shall fully set forth:

- (1) the reasons for its submission;
- (2) the alleged need or necessity for the requested change;
- (3) whether the proposal conflicts with any existing rule; and
- (4) what statutory provisions, if any, are involved.

(c) Such request shall be considered by the Board. If the Board approves further consideration of the proposed change, notice will be given that such proposal will be formally considered for adoption.

(d) In the event the Board initially determines that the proposal or request should not receive further consideration, the decision shall be reflected in the minutes of the Board. Notification of the action taken by the Board shall be sent to the person requesting the change.

5:2-3-6. Declaratory rulings

(a) Any person who may be directly affected by the existence or application of any of the public rules may request an interpretation or ruling regarding the application of such rule to a particular set of facts.

(b) The request shall be in writing and shall state the number and language of the rule and sufficient facts to support the request.

(c) The request shall be reviewed by the Board. The Board shall make a final determination of the interpretation or ruling. The final determination shall be furnished in writing within a reasonable time to the person making the request.

5:2-3-7. Website availability of Board actions and activities

(a) In addition to requirements of the Oklahoma Open Meeting Act and the Administrative Procedures Act, information regarding official or formal orders, rulings, and interpretations by the Board may, upon order, be made available through the official website of the Board. Such information may contain:

(1) the text of the order, ruling or interpretation;

(2) the date and location of the meeting at which the order, ruling, or interpretation was made; and

(3) effective date of any ruling, order, interpretation which will change procedures implementing or enforcement of the Act.

(b) Information regarding meetings and special activities of the Board shall be made available through the official website of the Board. Such information shall contain:

(1) date, time and location of any activity not required to be posted pursuant to the Oklahoma Open Meeting Act and

(2) the time frame within which comments can be provided to the Board.

CHAPTER 11. ADMINISTRATION OF ABSTRACTORS ACT

SUBCHAPTER 1. GENERAL PROVISIONS

5:11-1-1. Purpose

The rules of this chapter have been adopted for the purpose of implementing the Oklahoma Abstractors Act, Title 1, of the Oklahoma Statutes to establish criteria, fees, and procedures regarding abstract licenses, certificates of authority, temporary certificates of authority, and permits.

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

5:11-3-1. Who must hold abstract license

(a) Any person in the employ of a holder of a certificate of authority or permit, or a holder of a certificate of authority who is an individual actively engaged in the process of preparing abstracts, or the holder of a permit who is an individual actively engaged in the construction of an abstract plant, shall be required to have an individual abstract license.

(b) Any person who is employed by a holder of a permit or certificate of authority whose sole function is limited to reviewing documents to determine the type of instrument, date, parties, recording information and legal description, and entering such information into a manual or computer indexing system shall not be required to hold an abstract license. Such activity shall be conducted under the supervision of a licensed abstractor. Prior to the final entry of such documents to the abstract plant, a licensed abstractor must review, verify and accept such entries as final on behalf of the holder of the permit or certificate of authority. Any matter entered into the indexing system by an unlicensed person without proper licensed supervision may be deemed a violation of this Act.

(c) The holder of a certificate of authority or permit shall provide the Board with a list of the names of licensed and unlicensed employees in such form as directed by the Board.

5:11-3-2. Examinations for abstract license

- (a) The test for an abstract license shall be given at least quarterly and at such other times and 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.
- (c) If failed, the test can be taken two additional times during the next 12 months.
- (d) After failure to pass the test, an applicant shall be required to submit a new application and applicable fees if:
 - (1) The applicant has failed to pass the test three (3) times; or
 - (2) A twelve month period within which the applicant has taken the test one or more times expires.

5:11-3-3. Bonds required for permits and certificates of authority

(a) County records bond.

- (1) A bond in such form in favor of the Board protecting against loss or damage to county records shall be provided at the time of the application for certificate of authority or permit or within two (2) business days after approval by the Board.
- (2) 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.
- (3) If a surety bond is provided it shall be issued by a surety company licensed to do business in the State of Oklahoma.
- (4) 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.
- (5) The amount of the county records bond shall be at least in the amount set forth in section 27(c) of the Act.

(b) Errors and omissions bond or insurance.

- (1) Each application for a certificate of authority shall be accompanied by a bond or policy for 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) The Board shall accept either a personal or surety bond by issuing a written statement of acceptance.

(4) A personal bond shall 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, shall be accompanied by either cash or a certificate of deposit delivered to the Board.

(5) A certificate of deposit shall be issued by a federally insured financial institution in the State of Oklahoma and shall have a maturity term of a minimum of one (1) year.

(A) The certificate of deposit shall show on its face 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, a facsimile of the certificate of deposit, or copy of a cash receipt issued shall become part of the Board file of the holder of the certificate of authority or permit for whom they are given. These documents shall be available for examination and copying by the public.

(8) The amount of the errors and omissions bond or insurance shall be at least in the amount set forth in section 27(c) of the Act.

5:11-3-4. Application fees for permits, certificates of authority, and renewals

- (a) For each calendar year each initial application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00).
- (b) For each calendar year each renewal application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00).
- (c) For each calendar year a separate application and fee shall be submitted for each certificate of authority, permit, and renewal 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

5:11-3-5. Licensing associations, corporations, partnerships

An applicant for certificate of authority or permit 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.

5:11-3-6. Transfer of certificate of authority

- (a) 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.
- (b) 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.

5:11-3-7. Licensing nonresidents

- (a) Anyone who is not a resident of the State of Oklahoma who obtains an abstract license, certificate of authority, or permit 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.

5:11-3-8. Change of employment status

- (a) Upon change of employment, regardless of reason or place of relocation, a licensee shall report such change to the Board within ten (10) days of the effective date of the change.
- (b) Upon written request by the licensee more than 30 days prior to the expiration of a licensee's license, the Board may place a licensee on inactive status. Such status may be requested for one additional renewal period upon request and payment of the required renewal fees. The request for inactive status shall be in writing, on a form furnished by the Board.
- (c) During active military service, any licensee shall not be required to pay the fees but shall request the inactive status prior to each term for which the license is to be issued.
- (d) At any time the licensee complies with all requirements of the Oklahoma Abstractors Act, an inactive licensee may request active status, which request shall be in writing, on forms furnished by the Board.

5:11-3-9. Forms

The forms prescribed by the Board shall include but not be limited for the following:

- (1) **Certificate of authority.** The Board shall establish separate forms for the initial application for a certificate of authority, a temporary certificate of

authority, annual renewal of a certificate of authority, and transfer of ownership of certificate of authority.

(2) **Permit.**

(A) The Board shall establish separate forms for the initial application for a permit and for the annual renewal of a permit.

(B) The form shall include an affidavit prepared by the appropriate District Court Clerk and County Clerk certifying the status and availability of the county records.

(C) Each form regarding an initial application for a permit shall include a general statement of the law and instructions directing how the forms should be completed.

(D) The applicant for a permit shall provide the Board a list of all employees and third party providers involved in the construction of the abstract plant.

(3) **License.** The Board shall establish separate forms for the initial application for an abstract license and for the annual renewal of a license.

(4) **Uniform Abstract Certificate.** The Board shall establish a form which will provide to the consumer information including but not limited to:

(A) the authority for providing an abstract of title;

(B) the items being certified;

(C) beginning page and ending page;

(D) if the abstract certification excepts oil, gas, and other minerals, in which case substantial compliance with the following language shall be used: Except instruments of any kind and character relating to all oil, gas, and other minerals, including but not limited to deeds, grants, leases, assignments and releases thereof, all of which instruments are omitted and excepted entirely from this abstract.

(E) the period covered;

(F) the signature and license number of the licensee.

(G) certificate of authority number; and

(H) date of issuance.

(5) **Final Title Report.** The Board shall establish a form for a Final Title Report which will provide to the consumer information including but not limited to:

(A) the authority for providing a Final Title Report;

(B) the items being certified;

- (C) the period covered;
- (D) the signature and license number of the licensee;
- (E) certificate of authority number; and
- (F) date of issuance.

(6) **Abstract Rates filing.** The Board shall establish a form to be used to file annually the statutorily mandated list of abstracting fees.

(7) **Public Complaint.** The Board shall create a sample form for use by an individual filing a written complaint with the Board. Substantial compliance with the requirements set out in the form shall be sufficient for the Board to accept the complaint. The information required shall include but not be limited to:

- (A) the name, address, and phone number of the individual filing the complaint;
- (B) the name, address, and phone number of the person against whom the complaint is being filed;
- (C) the date of the preparation of the complaint; and
- (D) an outline of the complaint.

(8) **Effective date of changes.** Any change in a form shall become effective thirty (30) days after adoption by the Board. If the change is declared an emergency, the Board shall specify the shorter effective date.

5:11-3-10. Report of change of controlling interest

(a) The holder of a certificate of authority or a permit shall report a change of controlling interest to the Board within 10 days after the change of control becomes effective, unless such time period is extended upon request to the Board. Such report shall include:

- (1) the number of shares or percentage interest sold and by whom and
- (2) the number of shares or percentage interest purchased and by whom.

(b) As used in this section, the term “controlling interest” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the holder of a certificate of authority or permit as represented by an ownership interest. A change in ownership of 40% or more of the voting stock, entity interest, or individual interest of a holder of a certificate of authority or permit shall be reported as a change of controlling interest to the Board.

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

5:11-5-1. Inspections

- (a) A certificate or permit holder shall make the premises and records utilized within the performance of activities regulated by the Act available for an inspection. Inspections shall be conducted at the direction of the Board for purposes of determining compliance with the Act.
- (b) Failure to provide access as required for the inspection in a timely manner shall constitute an offense subject to fine, suspension, revocation, or such other sanction as may be available to the Board.
- (c) Certificate holders shall maintain a copy of the certificate page and if the legal description is not included on the certificate page, a copy of the caption page of each abstract, final title report, evidence of research, and billing information for five (5) years from the date of issuance.
- (d) The premises and records of each certificate and permit holder shall be inspected at least once every three (3) years.

5:11-5-2. Penalties for failure to pay renewal fees

- (a) The Board shall assess and collect penalties against licensees and certificate holders for failure to pay renewal fees when they are due.
- (b) Annually, due dates and penalties shall be posted in the Board office. If a due date or the amount of the penalty is changed, thirty (30) days notice shall be given before the change shall be effective.

5:11-5-3. Preparation of abstracts

- (a) **Type of abstract.** A certificate of authority holder shall cause the preparation of an abstract of title on real property which shall cover:
 - (1) a fee simple estate, less and except oil, gas and other mineral interests; or
 - (2) upon the request of a customer, a fee simple estate including oil, gas, and other mineral interests; or
 - (3) oil, gas and other mineral interests.
- (b) Abstract certificate. The abstract certificate and caption sheet shall reflect an appropriate disclaimer regarding that which is excluded.

(c) Contents of abstract. For the time period covered by the certification, an abstract of title shall include but not be limited to the following:

(1) all instruments that have been filed for record and have been recorded in the office of the county clerk for the county in which the property is located which:

- (A) legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;
- (B) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said real estate; and
- (C) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(2) the records of the court clerk for the county in which the subject property is located which:

- (A) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said subject property; and
- (B) judgments or transcripts of judgments against any of the parties appearing within the chain of title.

(3) 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 for the county in which the subject property is located due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon, and unpaid personal property taxes which are a lien on said real estate.

(d) **Federal court certificate.** Upon request of a consumer, a holder of a certificate of authority may certify to the records of the Clerk of the United States District Court and the Clerk of the United States Bankruptcy Court for such federal judicial districts for the time period covered by the certification, that disclose:

- (1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property; and
- (2) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(e) **Final certification for title insurance.** For purposes of a title insurance policy, a certificate of authority holder in the county where the insured property is located shall prepare either of the following:

- (1) an extension of the abstract or supplemental abstract; or

(2) a final title report after a final title search has been conducted. The final title report shall include all information required for an abstract of title pursuant to the Act and these rules, and shall be certified up to and including the effective date of the title insurance policy.

(f) **Other services.** Any service performed or product produced by the holder of a certificate of authority that does not qualify as an abstract of title or final title report shall not be designated as an abstract of title and shall not include an abstract certificate.

(g) **Statement of abstracting charges.** All charges for abstracts, 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 on invoices, statements, settlement statements, and consumer estimates.

(h) **Digital Abstracts.**

- (1) Digital abstracts may be offered pursuant to customer requests;
- (2) Must be in an open non-proprietary format;
- (3) If charges will be different from those charged for paper copies, the charges must be set out on the rate sheet

5:11-5-4. 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".

5:11-5-5. Abstracts furnished without delay

Failure by a certificate holder to furnish an abstract, abstract extension, supplemental abstract, or final title report within the time periods of 1 O.S. §32 shall be deemed to constitute unnecessary delay, unless the reason for the delay was beyond the control of the abstractor.

**SUBCHAPTER 7. APPLICATION FOR PERMIT TO DEVELOP
ABSTRACT PLANT**

5:11-7-1. Application for permit to develop abstract plant

(a) **Form.** The application shall be on a form prescribed by the Board.

(b) **Notice and review.** The chairman or designee shall review the application for compliance with applicable laws and rules. Additional information from the applicant or other persons may be requested by the reviewer as deemed appropriate. Within ten (10) days of receipt of the application, the Board shall:

(1) notify the court clerk, the county clerk, and all holders of a certificate of authority in the county wherein such business is to be conducted; and

(2) post notice of the receipt of the application for a permit on the official website of the Board and provide an address where written information relative to the application can be sent.

(c) **Comment period.** Any person desiring to provide information pertaining to the application shall submit the information in writing to the Board within twenty (20) days of the notice provided for in subsection (b) of this section. Additional information may be received upon approval of the Board or the Chairman. Comments shall include specific facts and specific legal authority, if known, supporting the request for approval or disapproval of the application.

(d) **Board action on application.** The application for a permit to develop an abstract plant shall be considered by the Board at the next meeting after completion of the review provided for in subparagraph (b) of this section.

(1) In the event an adverse comment is filed, the applicant and any person providing adverse comments shall be notified of the receipt of the adverse comment not more than ten (10) days from the date of receipt of such comment. Notice of the date, time, and place of the meeting at which the application and information will be considered by the Board shall be provided to all interested parties not less than ten (10) days before the date of the meeting at which the application will be considered is to be held.

(2) Presentation before the Board.

(A) At the meeting where the application is being considered the applicant shall be limited to thirty (30) minutes to present information in support of the application. All persons wanting to provide adverse comments regarding the application collectively shall be limited to thirty (30) minutes to present adverse comment or information. Additional time may be granted by the chairman upon good cause shown.

(B) The order of presentation of information regarding the application and opposition shall be established by the chairman.

(3) Criteria.

(A) The Board shall consider the following factors in arriving at its decision:

- (i) compliance with the Act and Rules;
- (ii) payment of applicable fees;
- (iii) adequacy of county records bond;
- (iv) the name of the company should not be deceptively similar to other certificate of authority or permit holders; and
- (v) the applicant must show an actual physical presence in the county.

(B) The Board may consider other factors deemed relevant to the consideration of the application including additional information not obtained during the review.

(4) Decision of the Board. After consideration and action by the board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant and any person submitting adverse comments.

5:11-7-2. Renewal of permit to develop abstract plant

(a) A permit holder must actively pursue construction of the abstract plant. Failure to do so may result in revocation of permit or non-renewal by the board.

(b) Board action on renewal application. The application for the renewal of a permit to develop an abstract plant shall be considered by the Board at the next meeting after receipt of the application and completion of the review.

- (1) In the event a motion is made to not renew a permit, the matter may be set down as a show cause matter at the next Board meeting.

The permit holder shall be notified of the matter at least ten (10) days prior to the meeting date. Notice of the date, time, and place of the meeting at which the application for renewal and information will be considered by the Board shall be provided to the permit holder. The notice shall include a statement of facts or conduct which warrant non-renewal of the permit.

(2) Presentation before the Board.

(A) At the meeting where the application for renewal is being considered the permit holder shall be limited to thirty (30) minutes to present information in support of the application. Other persons wanting to provide comments regarding the application collectively shall be limited to thirty (30) minutes to present information.

Additional time may be granted by the chairman upon good cause shown.

(B) The order of presentation of information regarding the application and opposition shall be established by the chairman.

(3) Criteria.

(A) The Board shall consider the following factors in arriving at its decision:

- (i) compliance with the Act and Rules;
- (ii) payment of applicable fees;
- (iii) adequacy of county records bond; and
- (iv) activity of the permit holder in pursuit of the construction of the plant.

(B) The Board may consider other factors deemed relevant to the consideration of the application for renewal including additional information not obtained during the review.

(4) Decision of the Board. After consideration and action by the board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the permit holder.

5:11-7-3. Business activities of a permit holder

(a) During the period of development of the abstract plant by a holder of a permit, until a certificate of authority is issued to such permit holder, the business activities of a permit holder and licensees under its supervision are limited to the construction of the abstract plant and activities directly related

thereto. A permit holder shall not sell or provide products or services to the public or for its own benefit from its plant under development and may not charge or collect fees for such products or services.

(b) The applicant shall comply with the Guidelines for Developing a New Abstract Plant as established by the Board.

5:11-7-4. Permit not transferrable

A permit is not transferrable. An individual, association, partnership, corporation, or other entity desiring to purchase the assets of a permit holder shall be required to file a new application for a permit to develop abstract plant pursuant to section 34 of the Act and Subchapter 7 of these rules.

SUBCHAPTER 9. APPLICATION FOR CERTIFICATE OF AUTHORITY

5:11-9-1. Application for certificate of authority

(a) **Form.** The application shall be on a form prescribed by the Board.

(b) **Notice and review.** The chairman or designee shall review the application for compliance with applicable laws and rules. Additional information from the applicant or other persons may be requested by the reviewer as deemed appropriate. Within ten (10) days of receipt of the application, the Board shall:

(1) notify the court clerk, the county clerk, and all holders of a certificate of authority in the county wherein such business is to be conducted;

(2) post notice of the receipt of the application for the certificate of authority on the official website of the Board and provide an address where written information relative to the application can be sent.

(c) **Comment period.** Any Person desiring to provide information pertaining to the application shall submit the information in writing to the Board within twenty (20) days of the notice provided for in subsection (b) of this section. Additional information may be received upon approval of the Board or the Chairman. Comments shall include specific facts and specific legal authority, if known, supporting the request for approval or disapproval of the application.

(d) **Board action on application.** The application for a certificate of authority shall be considered by the Board at the next meeting after completion of the review provided for in subparagraph (b) of this section.

(1) In the event an adverse comment is filed, the applicant and any person providing adverse comments shall be notified of the receipt of the adverse comment not more than ten (10) days from the date of receipt of such comment. Notice of the date, time, and place of the meeting at which the application and information will be considered by the Board shall be provided to all interested parties not less than ten (10) days before the date of the meeting at which the application will be considered is to be held.

(2) **Presentation before the board.**

(A) At the meeting where the application is being considered the applicant shall be limited to thirty (30) minutes to present information in support of the application. All persons wanting to provide adverse comments regarding the application collectively shall be limited to thirty (30) minutes to present adverse comment or information. Additional time may be granted by the chairman upon good cause shown.

(B) The order of presentation of information regarding the application and opposition shall be established by the chairman.

(3) **Criteria.**

(A) The Board shall consider the following factors in arriving at its decision:

- (i) compliance with the Act and Rules;
- (ii) payment of applicable fees;
- (iii) adequacy of errors and omissions insurance, corporate surety, or personal bond for possible errors in abstracts of title prepared by the applicant;
- (iv) adequacy of county records bond;
- (v) adequacy of abstract plant available for use-;
- (vi) the name of the company should not be deceptively similar to other certificate of authority or permit holders; and
- (vii) the applicant must show an actual physical presence in the county.

(B) The Board may consider any other factors deemed relevant to the consideration of the application including additional information not obtained during the review or inspections.

(4) **Decision of the Board.** After consideration and action by the Board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant and any person submitting adverse comments.

SUBCHAPTER 11. TEMPORARY CERTIFICATE OF AUTHORITY

5:11-11-1. Procedures for the Board to issue a temporary certificate of authority

In the event the Board determines that a temporary certificate of authority needs to be issued pursuant to the provisions of Section 33 of the Act, the Board shall:

- (1) declare the necessity for issuing a temporary certificate of authority;
- (2) notify the certificate of authority holder in writing of its determination;
- (3) furnish the certificate of authority holder a written list of violations;
- (4) suspend the certificate of authority of the subject holder pursuant to this chapter;
- (5) provide written notice of the intent to issue a temporary certificate of authority to the office of the county clerk and each holder of a certificate of authority located in the county;
- (6) accept applications for the issuance of the temporary certificate of authority; and
- (7) issue a temporary certificate of authority pursuant to the terms and conditions determined by the Board.

5:11-11-2. Application for temporary certificate of authority

- (a) **Forms.** The application shall be on a form prescribed by the Board. Such application shall include the applicants proposed list of abstract fees.
- (b) **Fee.** There shall be no fee for the application for temporary certificate of authority.
- (c) **Bonds** required for temporary certificate of authority. Each application for a temporary certificate of authority shall be accompanied by a county

records bond and errors and omissions bond or insurance as provided for in 5:11-3-3 of these Rules covering the county clerk and abstract business in the county for which the application is sought. Such bonds shall be provided at the time of the application for temporary certificate of authority or within two (2) business days after approval by the Board.

(d) **Business Plan.** A written and detailed plan for the conduct of abstract business in the county shall accompany the application for temporary certificate of authority.

(e) **Notice and Board action.**

(1) **Notice and review.** The chairman or designee shall review the application for compliance with applicable laws and rules. Additional information from the applicant or other persons may be requested by the reviewer as deemed appropriate. Within ten (10) days of receipt of the application, the Board shall:

(A) notify the court clerk, the county clerk, and all holders of a certificate of authority in the county wherein such temporary certificate of authority has been requested; and

(B) post notice of the receipt of the application for a temporary certificate of authority on the official website of the Board and provide an address where written information relative to the application can be sent.

(2) **Comment period.** The chairman or designee may establish a comment period pertaining to the application and shall submit the information as deemed appropriate in the circumstances. If a comment period is authorized, then any person desiring to provide information pertaining to the application may do so, in writing, pursuant to the comment period procedure authorized. Comments shall include specific facts and specific legal authority, if known, supporting the request for approval or disapproval of the application.

(f) **Board action on application.** The application for a temporary certificate of authority shall be considered by the Board at the next meeting after completion of the review provided for in subparagraph (e) of this section.

(1) In the event an adverse comment is filed, the applicant and any person providing adverse comments shall be notified of the receipt of the adverse comment not more than ten (10) days from the date of

receipt of such comment. Notice of the date, time, and place of the meeting at which the application and information will be considered by the Board shall be provided to all interested parties not less than ten (10) days before the date of the meeting at which the application will be considered is to be held.

(2) Presentation before the Board.

(A) At the meeting where the application is being considered the applicant shall be limited to thirty (30) minutes to present information in support of the application. All persons wanting to provide adverse comments regarding the application collectively shall be limited to thirty (30) minutes to present adverse comment or information. Additional time may be granted by the chairman upon good cause shown.

(B) The order of presentation of information regarding the application and opposition shall be established by the chairman.

(3) Criteria.

(A) The Board shall consider the following factors in arriving at its decision:

- (i) compliance with the Act and Rules;
- (ii) payment of applicable fees; and
- (iii) adequacy of county records bond and errors and omissions bonds or insurance.

(B) The Board may consider other factors deemed relevant to the consideration of the application including additional information not obtained during the review.

(4) Decision of the Board. After consideration and action by the board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant and any person submitting adverse comments.

(g) **Declaration of Emergency.** The Chairman may convene a special or emergency meeting of the Board pursuant to the Administrative Procedures Act of the Oklahoma Statutes to summarily take action involving the holder of a certificate of authority where the protection of the public requires emergency action. A written statement of the allegations constituting the emergency shall be provided to the Board members as soon as practicable before the hearing. Notice of the hearing and the written statement of

allegations constituting the emergency shall be provided to the subject holder of the certificate of authority as soon as practicable before any emergency hearing of the Board. The Board may determine that an emergency exists for the immediate issuance of a temporary certificate of authority, including but not limited to the suspension of the subject certificate of authority and approval of an application for temporary certificate of authority, pending proceedings for suspension or other appropriate action pursuant to these rules.

5:11-11-3. Duties, rights, and obligations under the temporary certificate of authority

A holder of a temporary certificate of authority shall have the same duties, rights and obligations of an abstractor pursuant to Title 1, Section 36 of the Oklahoma Statutes, including, but not limited to the maintenance of a Title Plant from the date of the issuance of the temporary certificate of authority.

5:11-11-4. Administration of temporary certificate of authority

(a) **Inspections.** A holder of a temporary certificate of authority shall make the premises and records utilized within the performance of activated regulated by the Act available for an inspection pursuant to 5:11-5-1 of these Rules.

(b) **Renewal of temporary certificate of authority.** A holder of a temporary certificate of authority may make application for the renewal of the temporary certificate of authority at least thirty (30) days prior to the expiration of the temporary certificate of authority as provided in Title 1, Section 33 of the Oklahoma States. The application shall be on a form prescribed by the Board.

5:11-11-5. Period of suspension

Such certificate of authority holder shall comply with the lawful requirements of the Board and shall have ninety (90) days from the date of the issuance of the temporary certificate of authority within which to comply with the requirements of the Board. If the certificate of authority holder does not comply with such requirements, such suspension may continue until such

requirements are remedied or until the Board approves or completes pursuit of additional options as provided in the Abstractors Act.

5:11-11-6. Extension of suspension

If, after notice and hearing, at the conclusion of the 90-day period, the Board determines that the certificate of authority holder has failed to comply with the requirements, or upon consent of the certificate of authority holder, the Board may issue an order authorizing the temporary certificate holder to:

- (1) Take charge of such certificate of authority holder and all of the property, books, records, and effects of the Abstract Plant;
- (2) Conduct its business; and
- (3) Take such other steps towards the removal of the causes and conditions which have necessitated such order, as the Board may direct.
- (4) The temporary certificate of authority holder may be required to post an additional errors and omissions bond in an amount determined by the Board.

5:11-11-7. Voluntary agreements

In order to avoid the expense and time involved in formal administrative or legal proceedings, the certificate of authority holder may enter into voluntary agreements that provide for the management and rehabilitation of the abstract plant provided that such agreement fully safeguards the public interest, subject to the approval of the Board. The Board reserves the right in all cases to withhold the privilege of disposition by voluntary agreement.

SUBCHAPTER 13. APPLICATION FOR ABTRACTOR LICENSE

5:11-13-1. Application for abstractor license.

- (a) Form. The application shall be on a form prescribed by the Board.
- (b) Qualified application.
 - (1) Approved application. If the Board shall be of the opinion that an applicant for license is qualified, the application shall be approved.
 - (2) Incomplete application. An applicant submitting either an incomplete application or an application requiring further information and/or investigation, shall either:

- (A) Sign a form acknowledging that the application has not received final approval; however, the applicant requests permission to sit for the examination. If thereafter the application is not approved, the examination grade will be voided and fee will not be refunded or
- (B) Wait for final approval of the application by the Board.

(c) Denial of application. After consideration and action by the Board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant.

CHAPTER 21. COMPLAINTS AND ENFORCEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

5:21-1-1. Administrative Procedures Act

The procedure for complaints, notice, hearing procedures, and regulation of matters covered by the rules of this Chapter shall be governed by the Administrative Procedures Act, and any conflict between the provisions of this Chapter and the Act, the Act shall govern.

5:21-1-2. Filing complaints

- (a) Any person having a complaint, which alleges violation or noncompliance with the Oklahoma Abstractors Act or the rules of the Board implementing that act, may address the complaint to the Board at its principal office.
- (b) The complaint shall be in writing and signed by the complainant. It shall contain:
 - (1) a clear and concise statement of the facts,
 - (2) the names, addresses significant to the complaint, and
 - (3) sufficient information to reveal the alleged violations with the facts on which the alleged violations are based.
- (c) When a complaint is the result of information contained in a published source, an original or copy of the publication with date published and full name of the publishing entity shall be filed with the Board.

- (d) In the event a complaint is received by an individual member of the Board or any member of the Board staff, the information shall be forwarded to the Board office for referral to the Enforcement Committee in accordance with the procedures adopted by the Board for processing other complaints received.
- (e) The person against whom the complaint has been filed shall be notified of the complaint.
 - (1) The notice shall include a copy of the complaint.
 - (2) The person against whom the complaint has been filed may file a response within twenty-one (21) days from the delivery of such complaint by mail, fax, or e-mail by the Board.
 - (3) The response shall be forwarded to the Enforcement Committee and shall become a part of the official complaint file.
- (f) The Enforcement Committee shall provide a quarterly report to the Board regarding the status of each pending complaint.
- (g) Any person who has filed a complaint shall be notified of the final disposition of the matter.

5:21-1-3. Investigators

- (a) The Board may appoint one or more individuals to investigate complaints received alleging violations of the Act or the rules of the Board.
- (b) An individual appointed as an investigator may be a volunteer who serves without pay or an individual hired to conduct the investigation. Any individual serving as an investigator shall serve at the pleasure of the Board.
 - (1) Individuals who are holders of an abstract license, certificate of authority, or permit shall be eligible to serve as Investigators. Any such individual shall provide sufficient information to the Board to assure no conflict of interest exists in the conduct of an investigation the individual is conducting.
 - (2) Other individuals may be appointed as investigators subject to review of their qualifications as they may be significant to the particular type of

investigation being conducted.

5:21-1-4. Special prosecutors

- (a) The Board may appoint a special prosecutor to work with the Enforcement Committee on a complaint under investigation.
- (b) The Board may utilize lawyers licensed to practice law in Oklahoma to serve as special prosecutors in formal proceedings before the Board.
- (c) An individual serving as special prosecutor shall not serve as legal counsel to the Board in the same formal proceeding.

5:21-1-5. Cost of investigations

- (a) Investigators and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.
- (b) Investigators and Special Prosecutors may be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

SUBCHAPTER 3. COMPLAINT INVESTIGATION PROCEDURES

5:21-3-1. Enforcement committee procedures

- (a) All complaints received by the Board, shall be referred to the Board Enforcement Committee for recommendation for action.
- (b) The Enforcement Committee shall be comprised of at least two (2) members of the Board appointed by the Chairman. In the absence of the Chairman of the Board appointing a Chairman of the Enforcement Committee, the members of the Enforcement Committee shall choose their Chairman.
- (c) Upon receipt of the complaint and information pertaining to the complaint, the Enforcement Committee may make appropriate inquiry to verify the information received.

(d) The Board may obtain a criminal record check of any person against whom a complaint has been filed from the Oklahoma State Bureau of Investigation or other law enforcement sources.

(e) Upon completion of the preliminary inquiry, the Enforcement Committee shall take one (1) or more of the following actions:

(1) Recommend to the Board that the investigation should be terminated because it appears:

(A) there has been no violation of the law or rules, or

(B) there is insufficient evidence to support any allegation of a violation.

(2) Attempt an informal resolution of the allegations of violations contained in the information received.

(3) Require further investigation.

(4) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

(5) Recommend a specific action by the Board.

5:21-3-2. Responsibility of investigators

(a) Upon referral from the Enforcement Committee, an investigator shall determine whether there exists sufficient cause to believe that misconduct has occurred which justifies the institution of formal proceedings. Such determination shall be presented to the Enforcement Committee in a report written and signed by the investigator.

(b) Such report shall contain a summary of the evidence, including any material provided by the accused, conclusions of fact, specific reference to applicable laws and rules, and recommendation with respect to institution of formal proceedings.

(c) All investigations shall be conducted in a timely manner.

(d) Upon conclusion of any investigation, the investigators shall promptly report the results to the Enforcement Committee.

SUBCHAPTER 5. FORMAL COMPLAINT PROCEDURES

5:21-5-1. Filing of formal complaint

- (a) The Enforcement Committee and the special prosecutor shall determine if a formal complaint should be filed.
- (b) In the event the Enforcement Committee and the special prosecutor do not agree on whether a formal complaint should be filed, the Chairman of the Enforcement Committee shall prepare a report for the Board. The Board shall make the final determination regarding further action.
- (c) The formal complaint shall be signed by the special prosecutor or the Chairman of the Enforcement Committee. In the event the special prosecutor and the Enforcement Committee do not agree, the Chairman of the committee shall sign the formal complaint.
- (d) The formal complaint shall include a concise statement of the allegations and particular sections of the Act or rules of the Board which are involved.

5:21-5-2. Violations by holders of a certificate of authority, abstract license, or permit

- (a) In the event the investigation of an allegation against a holder of a certificate of authority, abstract license, or permit concludes that the individual against whom the complaint has been filed is in violation of the Act or the rules of the Board, the Board shall take any authorized action to protect the public from the unauthorized or illegal action of the license, certificate, or permit holder.
- (b) The Chairman of the Board shall set a time and place for the hearing of the formal complaint. Notice of the hearing shall be sent to the individual against whom the complaint has been filed not less than twenty (20) days from the date of the hearing at the last known address as shown in the official records of the Board.
- (c) The person against whom the complaint has been filed shall be provided with any material information including any staff memoranda or data to be

relied on by the Board.

(1) At the hearing, the person against whom the formal complaint has been filed shall be afforded an opportunity to contest the reports and other materials referenced.

(2) The experience, technical competence, and specialized knowledge of the members of the Board may be utilized in the evaluation of the evidence.

5:21-5-3. Formal complaint hearing procedures

(a) Hearings will be conducted by one of the following methods, determined by the Board before the hearing begins:

(1) By the Board;

(2) By any member of the Board or a designee of the Board acting as a hearing examiner or Administrative Law Judge; or

(3) By an attorney licensed to practice law in this state appointed by the Board to act as a hearing examiner or Administrative Law Judge.

(b) All oral proceedings shall be electronically recorded.

(1) The electronic record shall be transcribed upon request of any party to the proceeding.

(2) All costs of such transcription shall be paid in advance by the requesting party.

(3) The accused may use a licensed court reporter to report and transcribe the hearing. The cost of such reporter shall be paid by the accused.

(c) The hearing record of any formal proceeding shall be open to the public.

5:21-5-4. Standards for making decision

(a) The Board may take notice of:

(1) Judicially cognizable facts, and

(2) Generally recognized technical or scientific facts within the specialized knowledge of one or more members of the Board.

(b) The standard of proof in all hearings shall be clear and convincing

evidence.

(c) The Board shall consider past disciplinary action taken against any accused found guilty in any present proceeding. Such past conduct shall not be evidence of guilt in the present proceeding but will be considered only in determining appropriate sanctions to be imposed by the Board in the present proceeding.

(d) Unless precluded by law, the accused may waive any right granted in the law and proceed by stipulation, agreed settlement, consent order, or default. No provision of this section shall be construed as prohibiting the Board from suspending, or holding in abeyance, any formal proceeding pending the outcome of informal negotiation or informally agreed upon terms.

(e) All orders shall be in writing and state findings of fact, conclusions of law, and actions to be taken. Final orders shall state their effective date.

5:21-5-5. Subpoena of witness, documents, or things

(a) In all cases the Board may issue subpoena or subpoena *duces tecum* where a party desires to compel the attendance of witnesses after a complaint has been filed.

(b) When the party or the attorney for the party desires to have witnesses subpoenaed to appear before the hearing examiner, a request in writing shall be made by such party or the attorney, giving the name and correct address of any such witness.

(c) The requesting party shall pay the cost of service.

5:21-5-6. Discipline for violations by applicants

(a) An applicant for an abstract license who is alleged to have violated the Act, the rules of the Board, or who subverts or attempts to subvert the examination process shall be subject to disciplinary action by the Board.

(b) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.

(c) Upon the determination that the applicant is guilty of the allegations, the Board may impose one or more of the following disciplinary measures on the applicant:

- (1) withhold the grades on the examination;
- (2) declare the scores on the examination invalid;
- (3) disqualify the applicant from obtaining a license for a specified period of time; or
- (4) impose other authorized penalties.

5:21-5-7. Violations by individuals who do not hold a certificate of authority, license or permit

(a) In the event the investigation of an allegation against an individual who is not a holder of a certificate or abstract license concludes that the accused is in violation of the Act or rules of the Board and that action should be taken to stop the violation, the Board may designate a member of the Board, staff member, or other individual acting for the Board to:

- (1) Provide notice by:
 - (A) Sending written notice of the accusation, supporting documentation and a copy of the Complaint and Notice of Hearing, to be held not later than sixty (60) days following such notice, to the accused by certified mail, restricted delivery, return receipt requested; or
 - (B) Personal service upon the person of the accused in a manner authorized by the statutes of the State of Oklahoma for service of process in a civil proceeding;
- (2) Provide the accused with a copy of the Act and rules of the Board along with its notification of the accusation and Complaint and Notice of Hearing.

(b) The Board, at a full and formal hearing, shall make a final determination of the accusations against the accused and issue such permanent cease and

desist order, fine, penalty, or other action as authorized by the Act and the rules of the Board.

5:21-5-8. Final orders

- (a) A final order shall be in writing and shall include separate statements of the findings of fact and conclusions of law.
- (b) Findings of fact shall be accompanied by a concise and explicit statement of the evidence supporting the findings. The order shall include a ruling on proposed findings of fact submitted by a party to the proceeding.
- (c) A copy of the final order shall be delivered or mailed to each party or to their attorney of record as soon as practicable.

5:21-5-9. Rehearings

- (a) An application for rehearing may be made in writing within ten (10) days of the date of the final order. The petitioner shall set forth one (1) or more of the following as grounds in the rehearing request:
 - (1) newly-discovered or newly-available evidence relevant to the issues;
 - (2) need for additional evidence to adequately develop the facts essential to a proper decision;
 - (3) probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;
 - (4) need for further consideration of the issues and the evidence in the public interest; or
 - (5) showing that issues not previously considered ought to be examined in order to properly dispose of the matter.
- (b) Nothing in this Subchapter shall prohibit the Board from rehearing, reopening, or reconsidering a matter at any time on the grounds of fraud practiced by the prevailing party, procurement of perjured testimony, or fictitious evidence, and in accordance with other statutory provisions applicable to the Board.