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Abstracting: Licensure and Regulatory Impacts in Oklahoma - Summary*

The Abstracting and Title Insurance Industries are critical parts of the real estate transaction process. Abstractors gather all recorded documents related to the ownership history of a property prior to sale, so an attorney can ensure that the seller really owns the property, and does not have outstanding liens or other ownership interests clouding the title. Title insurance underwrites the buyer's rights in the property, promising to defend him against unforeseen claims, or pay him what he has invested in the property if someone else ends up proving they own the land.

Unfortunately, Oklahoma regulates the abstracting and title insurance industries in ways that are bad for consumers and bad for entrepreneurs. This ensures that no innovation can ever take place.

There are 5 critical regulations that burden our state. Everyone is paying the price, whether they own property or not, since landlords must pass these costs along to renters. Retailers do the same with their customers. It is an unavoidable part of their overhead, but it is not inevitable. The most burdensome policies, in order, are:

- Requiring every abstracting company to create and maintain a title plant.
- Requiring Title Insurers to have an attorney review a full abstract, created or updated by a licensed abstractor. An update can only be of a previous abstract created by a licensed abstractor.
- Requiring every abstracting company to have a certificate of authority from the abstracting board.
- Requiring a license to work as an abstractor (a license does not allow licensees to operate their own abstracting companies, but merely allows them to perform abstracting work for a company with a certificate of authority).
- Requiring a permit to begin building a title plant.

The national average cost of title insurance and abstracting (after adjusting for the cost of living in individual states) on a \$250,000 home is \$1,421. The cost in Oklahoma is \$1,708. The average cost in states that do not require title plant ownership (that is, abstractors are allowed to rely on county records) is only \$1,380.

The 1889 Institute computed expected values for the number of "title offices" and the number of "title professionals" for every state based on a nationwide comparison of state populations, population change, and total land area. Oklahoma had more professionals and fewer offices than would be expected. The higher number of professionals indicates that Oklahoma's state regulations require more "busywork," necessitating more workers. The low number of offices indicates high barriers to entry for new firms.

A comparison between Oklahoma's laws and those of other states bears this out. Oklahoma requires insurers to hire outside abstractors to compile an abstract for each property dating back to the last time the land was owned by a sovereign (the state/territory, a tribe, or the federal government). Some states say that a period of 25-50 years is sufficient. Other states allow insurers, within the bounds of sound underwriting principles, to determine how much risk they are willing to accept. They can spend as much or as little time and money researching the property as they see fit. This allows insurers in a competitive market to find the most efficient balance of risk and research, saving everyone money.

Oklahoma should follow the lead of this last group and deregulate abstracting. Insurers should be allowed to determine how much risk to accept. These seasoned professionals will find the optimal risk point while protecting consumers. The interests of consumers and insurers are aligned on this matter, meaning the public can trust insurers to protect their bottom line, which in turn protects the consumer. Oklahoma should abolish the Abstractors Board, allow anyone to search and examine a title's history, allow title insurers to rely on county records, and, most importantly, allow insurers to choose the length of title search that is right for them.