

What to Expect When You're Doing Business in an Abstract State

BY: TINA COSTELLO, TITLE DEPARTMENT MANAGER, CONTINENTAL REAL ESTATE SERVICES

FEW THINGS CAN BE more complicated and frustrating than doing business in an abstract state. Unlike traditional title insurance states, abstracts are not only more time consuming – they are also more expensive. There are inevitably delays and, when time is of the essence – as it is in most title clearance cases—it can cause a lot of aggravation.

So what exactly are abstracts, which states require them and what is involved in compiling them?

Abstracts are a full and complete documentation of all matters filed of public record that affect ownership rights to a particular piece of property. They are the compilation of documents from when a property was first curated through the current date. For example, land might have been granted in the 1800s when the U.S. first created the property (e.g. acquired it from Native American land). The chain of title could extend back 200 years or more unlike typical title commitments which are only required to go back 40 – 45 years. Sometimes the documents are in another language – French, for instance – or written in Old English.

An abstract plant is an organized collection – either physical or virtual – of copies or images of instruments affecting real property that are filed for record at the offices of the county clerk and court clerk, with an index that is built independently of the county's index of record.

In all cases, abstracts require meticulous research and have to be completely built from original sources that can only be found in places such as the city or county courthouse or the office of the Recorder of Deeds. And, unlike traditional title commitments which are 3 – 5 pages long, finished abstracts can easily be four inches thick!

Abstracts can only be done by an abstracting company that is licensed in the specific county within a state. There are stringent rules about who can be certified as an abstractor and it's not easy to become one. The finished compilation is not a simplified report providing the names, dates, amounts, etc., of the pertinent documents. It is a full "abstract" or summary of each document in the chain—at least one page for each document. In Oklahoma, for example, an abstractor does not weed out documents that are no longer pertinent, such as satisfied mortgages or deeds of trust, or expired oil leases. The attorney determines which information is relevant when he or she examines the abstract.

Another key difference between abstracts and other title insurance reports is the recipient of the final document. Abstracts

are delivered to a real estate attorney certifying title for the policy. Policies are issued only on an attorney's signature. This, of course, affects the time and cost because you have to find the abstract that has been compiled over the years – or you have to rebuild it. You're in luck if the last abstract company that worked on it still has it, or the last title company, or the property owner, or an attorney. In the case of a foreclosure, the property owner might well have discarded the abstract as unimportant because he or she is not benefitting from the sale and has nothing to gain by keeping it.

In any case, once – and if – the abstract is located, you have to wait for the holder to retrieve it and deliver it to the abstract company updating the abstract, and for them to deliver it to the new title company. And in an abstract state such as Oklahoma, no fax or email is allowed.

The good news is that only a few states require abstracts: Oklahoma, Iowa and certain areas within the Dakotas. There is no standard fee. In each case, the cost is determined by how long it takes to compile the abstract. And, of course, because an attorney has to issue an opinion, the price is higher than it would be in a state like Missouri, for example, where the information is given to a licensed examiner who issues a title commitment to insure.

Although the title and closing process in abstract states tend to be more challenging, especially with default properties, there is a benefit to the system. The more common method of searching land records may be faster and less expensive than compiling an abstract, but the report may not be as detailed. It is worth noting that regardless of how a title defect is discovered (via abstract or traditional title search), concerns raised in abstract states are similar to concerns raised within title searches done in other states. For example, three land document searches could yield three different outcomes depending on the title company's thoroughness and quality of research. In an abstract state, there is only one abstract, but if three different attorneys reviewed it you might get three different opinions. Although the abstract searches are considerably more detailed and provide a lot of historical information, the abstract process does not eliminate the possibility of complications. In all states, someone (whether an attorney or a title examiner) must review the title history (whether in the form of an abstract or a title report) and make a determination of quality/insurability based on the findings. Bottom line, the issuance of a title policy or certification will ultimately come down to someone's opinion of the amount risk involved. ■



A CELA Award winner while at Bank of America, Tina Costello brings over 18 years of title expertise to the CRES team. From abstracting to post-closing she guides our specialized title coordinators, assistants and lien specialists to ensure the highest level of customer service.