

Banking, Commerce, and Insurance Committee

Nebraska Legislature

Occupational Regulation Review

of the

Abstractors Act

Pursuant to the

Occupational Board Reform Act,

Neb. Rev. Stat. §§ 84-933 to 84-948

And Interim Study Resolution LR 120 (Slama)

December 2023

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The Occupational Board Reform Act (OBRA), *Neb. Rev. Stat.* §§ 84-933 to 84-948, was enacted in 2018 to provide for legislative review of occupational regulations.

Neb. Rev. Stat. § 84-948 (1) provides as follows:

1. Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

The Banking, Commerce and Insurance Committee's recommendation is that the occupational regulations related to the Abstracters Act should be:

- Terminated*
- Continued*
- Modified*

Neb. Rev. Stat. § 84-948(2) provides as follows:

2. Each committee may require the submission of information by the affected occupational board and other affected or interested parties.

Banking, Commerce and Insurance Committee staff sent out a request for the submission of information by the Abstracters Board of Examiners on June 21, 2023. The Board submitted the requested information on November 2, 2023. The information found in this report is directly related to answers provided in that submission. A link to the submitted information can be found below:

[https://nebraskalegislature.gov/reports/committeesurvey](https://nebraskalegislature.gov/reports/committeesurvey/view.php) [view.php](#)

Neb. Rev. Stat. § 84-948(3) provides as follows:

3. A committee's report shall include, but not be limited to, the following:
 - a. **The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;**
Title of Regulated Occupation: Abstracters
Name of Occupational Board: Abstracters Board of Examiners
 - b. **The statutory citation or other authorization for the creation of the occupational regulations and occupation board;**

The Abstracters Act. Neb. Rev. Stat §§ 76-535 to 76-558. Specifically, Neb. Rev. Stat § 76-540.

c. The number of members of the occupational board and how the members are appointed;

Consists of five members to be appointed by the Governor to carry out the purposes of and enforce the Abstracters Act.

d. The qualifications for membership on the occupational board;

The board shall include three members who shall at all times be active registered abstracters who have engaged in the business of abstracting for at least five years, one member who shall be a lawyer experienced in the area of real estate law, and one member who shall be representative of the public. No more than two members of the board shall be appointed from the same county, at least one member shall be appointed from a county having as its largest city a city of the first class, and at least one member shall be appointed from a county having as its largest city a city of the second class. No member of the board shall be employed by the same employer as any other member of the board. Each member of the board shall serve for a term of five years and until a successor is appointed and qualified, except that members of the board currently serving on March 26, 1985, shall continue to serve the terms for which they were appointed. The first attorney member of the board whose term expires after March 26, 1985, shall be succeeded by the representative of the public. Vacancies created by the death, resignation, or other disability of a board member resulting in the inability to carry out his or her duties shall be filled by appointment by the Governor and such successor shall possess the same qualifications as the member replaced and such member shall, upon qualification, serve the unexpired term of the member whom he or she succeeds. No member of the board shall be appointed to succeed himself or herself.

e. The number of times the occupational board is required to meet during the year and the number of times it actually met.

Required FY22-23 2 Held 3

Required FY21-22 2 Held 3

Required FY20-21 2 Held 2

Required FY19-20 2 Held 3

Required FY18-19 2 Held 3

f. Annual budget information for the occupational board for the five most recently completed fiscal years

Separate budget. Other Funding Sources: Fund 26610 program 058 includes application fees, exam fees and registration/relicensing fees.

FY22-23 \$27,729

FY21-22 \$27,447

FY20-21 \$25,169

FY19-20 \$25,468

FY18-19 \$24,256

- g. For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certificates, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;**

Abstracter

<i>Period</i>	<i>Certs Issued</i>	<i>Individual Licenses</i>	<i>Firm Licenses</i>	<i>Revocation</i>
2018 to 2023	710			0

“Revoked Certificate” means a removal or suspension of a license.

“Denied Certificate” means the refusal to issue a license to an applicant due to an unacceptable application (i.e. felony).

The Board does not have authority to penalize.

- h. A review of the basic assumptions underlying the creation of the occupational regulations;**

The Abstracters Board of Examiners, created in 1965, consists of five members appointed by the Governor to carry out the purposes of and enforce the Abstracters Act. The Board includes three members who shall at all times be active registered abstracters who have engaged in the business of abstracting for at least five years, one member who shall be a lawyer experienced in the area of real estate law and one member who shall be a representative of the public. The Abstracters Board is charged with the responsibility of supervising, inspecting, examining and reviewing the practices of licensees required under the abstracters' licensing law and regulating the registration and certification of individual abstracters, as well as those companies engaged in the business of abstracting. Members of the Board review applications for approval of seminars and continuing education programs and a decision is rendered on the number of credit hours approved for each program. A member of the Board or the Director then monitors these programs.

The Board was given rule-making authority in the Abstracters Act in Section 76-541:

“The board may adopt and promulgate such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the Abstracters Act. Such rules and regulations may provide that, except for hearings on

the revocation of certificates issued by the board, the business of the board may be conducted while in session as a body or by correspondence. Such correspondence shall be directed to the director to be incorporated into the records of the board.”

The Board was assigned Title 1 in the Nebraska Administrative Code (NAC) as the location for its properly promulgated rules. As indicated in 76-541 and 76-536 the basic assumption underlying the creation of regulations includes the establishment of regulations to maintain a minimum standards of proficiency and competency in the business of abstracting.

i. A statement from the occupational license board on the effectiveness of the occupational regulations, and

Following Statement from the Abstracters Board of Examiners Director Julie Hoppe:

The Board is responsible for supervising, inspecting, examining, and reviewing the practices of licensees under the abstracters' licensing law and regulating the registration and certification of individual abstracters, as well as those companies engaged in the business of abstracting. Board members approve continuing education credits for seminars and other education programs and monitor continuing education programs. The Board also reviews and investigates complaints against licensees.

The board also proctors exams for potential licensees 2 times per year. The area of abstracting is a very complex one. The abstracter (title searcher) must have vast knowledge of the real estate records, the court systems, and all of the statutes that affect real property. They must also be able to read, comprehend and map a complex legal description (which can be multiple pages long) The licensing exams given by our agency provide proof that the licensees indeed have that knowledge.

The requirement for continuing education for bi-annual relicensing ensures that abstracters continue to learn and maintain appropriate knowledge of the industry as statutes continue to evolve. Not having that knowledge could be devastating to the public when they are involved in a real estate transaction. The general public, as well as lenders, attorneys and others need to be able to rely of the report of title produced by the abstracter in regard to their real property.

*The Nebraska Supreme Court has found in two cases, most recently in 2022, *Mai vs German*, Case No S-22-0017, that the professional statute of limitations applies to abstracters, which would also affirm the importance of occupational regulations in regard to abstracting.*

j. A comparison of whether and how other states regulate the occupation.

See Attachment “A”

Neb. Rev. Stat. § 84-948(4) provides as follows:

4. Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for the meeting such policies:

- a. **If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific good or service;**

No recommendation to strengthen powers under UDTPA.

- b. **If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendations will be to require periodic inspections of such facilities;**

N/A

- c. **If the need is to protect consumers against potential damages and failure by providers to complete a contract fully or up to standards, the likely recommendations will to require that be bonded;**

No bond requirement. But abstracters have liability under 76-556.

- d. **If the need is to protect a person who is not party to contract between the provider and consumer, the likely recommendation will be to require that he provider have insurance;**

None. But abstracters have liability under 76-556.

- e. **If the need is to protect consumers against a potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;**

Abstracters are required to possess a certificate of authority from the licensing board.

- f. **If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods and services relative to the providers' knowledge, the likely recommendation will be to enact government certifications, and;**

Abstracters have a continuing education requirement under Neb. Rev. Stat. § 76-544.

- g. **If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's ability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.**

Abstracters are required to possess a certificate of authority from the licensing board.

Neb. Rev. Stat. § 84-948(5) provides as follows:

5. If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under section (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

N/A

Neb. Rev. Stat. § 84-948(6) provides as follows:

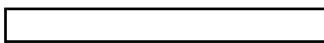
6. In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

Neb. Rev. Stat. § 84-948(7) provides as follows:

7. If the committee finds that it is necessary to change professional regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

The regulatory framework for issuance of certificates and permits is established by the Legislature and administered by the Abstracters Board of Examiners. It is serving the expectations of Nebraskans by safeguarding the welfare and property of citizens of this state and insuring that abstracters serving the public meet minimum standards of proficiency and competency. As a whole, this regulatory framework is appropriate and balanced and does not need modification at this time.



Comparison of other states that require an Abstracter License

State Name	License Req?	Exam Req?	Continuing Ed	Relicensing
Nebraska	Yes	Yes	Yes	Every 2 Years
South Dakota	Yes	Yes	No	Every 2 Years
Minnesota	Yes	Yes	No	Yearly
Kansas	Yes	Yes	No	Yearly
Oklahoma	Yes	Yes	No	Yearly
North Dakota	Yes	Yes	Yes	Every 3 Years
Arkansas	Yes	Yes	Yes	Yearly