

No. 120

ABSTRACTERS, Board of—BONDS—INSURANCE

Held: Liability insurance certificate running to abstracter cannot be accepted in lieu of bond or securities required of abstracters under Section 4139.13 of the Revised Codes of Montana, 1935.

May 22, 1941.

Miss Margaret M. Egan, Secretary
Abstracters Board of Examiners
Stanford, Montana

Dear Miss Egan:

Your Board has submitted a copy of an Abstracters Liability Insurance Certificate as issued by the Underwriters at Lloyd's of London, and inquires as to the right of your board to accept such certificate in lieu of a surety bond.

Section 4139.13 of the Revised Codes of Montana, 1935, provides in part as follows:

"Section 4139.13. Bond or Other Securities Required. Before a certificate of authority shall be issued, the applicant shall file with the Board a bond or bonds, to be approved by it, running to the State of Montana, in the penal sum of five thousand dollars, for the use of any owner, mortgagee or other person having an actual interest in the real estate covered by an abstract of title, or any title insurance company licensed and authorized to do business in this State, who may be aggrieved; such bond or undertaking shall be conditioned for the payment by such abstracter of any and all damages that may be sustained by or may accrue to any such person or company by reason of or on account of any error, deficiency or mistake in any abstract or certificate of title, or any continuation thereof, made or issued by such abstracter; said bond shall be written by some surety or other company issuing such bonds and licensed and authorized to do business in this State, and no personal bonds are to be accepted under this provision. The bond or undertaking herein provided for shall be in full force and effect for a period of one year, and may be renewed annually by a continuation certificate; such continuation certificate, however, shall not increase the amount of liability under the original bond. Provided, however, that no person, firm or corporation shall be required at any time to have in force and effect with said board, valid bonds in excess of the penal sum of five thousand dollars. . . ."

The liability insurance certificate runs to the abstracter and by its express terms denies recovery upon breach of any of its conditions or for false representations contained in the proposal. It does not afford the protection required by Section 4139.13 to persons having an interest in the property covered by the abstract. Only bonds or security expressly designated by Section 4139.13 should be approved by the Board.

Sincerely yours,

JOHN W. BONNER
Attorney General