

# BEFORE THE IOWA FINANCE AUTHORITY, TITLE GUARANTY BOARD

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IN RE: )  
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APPLICATION FOR A TITLE PLANT AND ) RULING GRANTING APPLICATION TO WAIVE  
TRACT INDEX WAIVER BY Davis County ) TRACT INDEX REQUIREMENT  
Abstract & Title, L.L.C. )

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## INTRODUCTION

Davis County Abstract & Title, L.L.C. (hereinafter DCAT), an abstractor in Davis County, has applied for a temporary waiver of the 40-year title plant and tract index requirement pursuant to Iowa Code §16.91(5)b to become a participating abstractor in the Title Guaranty program. The waiver DCAT has asked for is temporary due to the fact that it is building a title plant. This type of temporary waiver request is described in 265 IAC 9.7(8)a "Provisional Waivers".

For the reasons explained below, the Board grants the provisional title plant waiver.

## RECORD

The record before the Board includes the following:

- Davis County Abstract & Title, L.L.C.'s Application for Waiver.
- Eleven letters in support of the Application for Waiver.
- Recommendation from Title Guaranty Director granting the waiver for one year.

On December 13, 2011, the Board held a hearing on DCATs' Application for Waiver. The following individuals appeared before the Board: David Truitt and R. Kurt Swaim – both from Davis County Abstract & Title, L.L.C. David Truitt is currently a Title Guaranty participating abstractor and President of Truitt Abstract Company, Inc. in Wapello County. Mr. Truitt has been abstracting since 1974. R. Kurt Swaim is a licensed Iowa attorney and, along with Truitt and two others, are members of Davis County Abstract & Title, L.L.C. Mr. Swaim has been an attorney since 1975 and his practice has included abstract examination, as well as non-plant abstracting services. The Board has taken into consideration the detailed career summaries provided in the Application.

# APPLICABLE LAW, ANALYSIS AND RULING

## Applicable law

The division board may issue a ruling permanently or provisionally waiving the requirement set forth in Iowa Code §16.91(5)"a"(2) of an up-to-date title plant requirement, if the board finds the following under Iowa Code §16.91(5)b, 265 IAC 9.7(7)a, and 265 IAC 9.7(7)b; and meets the requirements in 265 IAC 9.7(8)a. Pursuant to Iowa Code §16.91(5)"b" and 265 IAC 9.7(7) the division board may grant a provisional waiver when the Board finds both of the following:

- a) The title plant requirement described in Iowa Code Supplement §16.91(5)"a"(2) imposes a hardship to the abstractor or attorney; and
- b) The waiver is:
  - 1) Clearly in the public interest; or
  - 2) Absolutely necessary to ensure availability of title guaranties throughout the state.

In addition to meeting the requirements stated in Iowa Code §16.91(5)"b" and 265 IAC 9.7(7), pursuant to 265 IAC 9.7(8)a the Board may grant a provisional waiver when the applicant provides the following:

- 1) Evidence that a title plant will be built for a specified county;
- 2) Evidence of significant financial loss due to the inability to provide abstracts for the division;
- 3) Evidence that the provisional waiver is necessary in order to produce a revenue stream to justify the expense associated with building a title plant;
- 4) Professional references from two licensed Iowa attorneys or one participating plant-abstractor attesting to the applicant's ability to abstract.

## Analysis

### **A. Has DCAT satisfied the requirements pursuant to Iowa Code §16.91(5)"b"; 265 IAC 9.7(7)a?**

After considering the record, the Board finds that the title plant requirement described in Iowa Code §16.91(5)"a"(2) imposes a hardship to Davis County Abstract & Title, L.L.C..

Hardship is defined in 265 IAC 9.7(2). This states that "*Hardship*" means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances. Financial hardship alone may constitute a hardship.

DCAT has stated that a most of the abstracts in Davis County are for properties that have mortgages that are sold on the secondary market which require title guaranties. Lenders have stated that they will not do

business with an abstractor that is not a Title Guaranty participant. Without this business, it is difficult to create a stream of income in order to complete the construction of the title plant. DCAT has proven that the cost of start-up of the business and the loss of income due to not being a Title Guaranty participant is a financial hardship. There have been financial resources already expended in start-up costs. There are significant expenses regarding payroll, rent, utilities, cost of obtaining records and insurance. Additional personnel will be added to prepare and create the forty-year title plant that will further increase their cost of doing business. The stream of income from abstracts for Title Guaranty transactions has been proven necessary in order to justify the expense of building, owning and maintaining their title plant. The Board concludes that these listed issues create a long-term adverse financial hardship under Iowa Code §16.91(5)"b" and 265 IAC 9.7(7)(a).

***B. Has DCAT established that the provisional waiver up-to-date title plant requirement described in Iowa Code §16.91(5)"a"(2) is either clearly in the public interest; or is absolutely necessary to ensure availability of title guaranties throughout the state pursuant to Iowa Code §16.91(5)"b" and 265 IAC 9.7(7)b?***

After considering the record, the Board concludes that granting a provisional waiver of the 40-year plant requirement to DCAT is clearly in the public interest.

The Board finds that a new title plant in Davis County creates an opportunity for consumer choice. The DCAT business model increases availability of title guaranties and Title Guaranty services in Davis County. The end result will be an ability to search the chain of title from a forty-year title plant which is the preferred method of providing title evidence for the purpose of issuing title guaranties. Further, the Board finds that DCAT has demonstrated its ability to abstract competently in a way that will be in the public interest. This has been shown by the Application, the letters of support, and the testimony provided at the meeting.

Considering all of these factors, the Board finds that DCAT has established that the waiver of the 40-year plant requirement is clearly in the public interest thus satisfying the requirement found in Iowa Code §16.91(5)"b" and 265 IAC 9.7(7)(b)1.

**C. Has DCAT established that a waiver of the 40-year plant requirement described in Iowa Code §16.91(5)"a"(2) meets the provisional waiver requirements found in 265 IAC 9.7(8)(a) 1-4?**

The Board finds that DCAT has provided ample evidence that their title plant will be built in Davis County which meets the requirement shown in 265 IAC 9.7(8)(a)1. They are already in the process of obtaining copies of indices of recorded documents from the Davis County Recorder. They have the software to create and maintain the title plant made from these indices. They are also planning to hire an additional employee to assist in the building of the title plant. Current employees will work on the title plant when not working on abstracting and real property searches. The evidence supports their expectation that a title plant can be built within one year.

The Board finds that DCAT will be faced with a significant financial loss if their abstracting is unable to be used for Title Guaranty purposes which meets the requirement shown in 265 IAC 9.7(8)(a)2. The Board finds that DCAT has shown that the majority of the abstracts in Davis County are for properties that have mortgages that are sold on the secondary market which require title guaranties. Their utilizing DCAT while the plant is being built is therefore contingent upon Title Guaranty accepting DCAT's abstracts. Lenders would not do much business with DCAT if they are not a participating abstractor and DCAT has shown that it will not be allowed to compete for a majority of the abstract business in Davis County.

The Board finds that DCAT has shown that the provisional waiver of the title plant requirement is necessary to produce a revenue stream to pay the expenses of the building of the title plant which meets the requirement shown in 265 IAC 9.7(8)(a)3. There are significant ongoing expenses regarding payroll, rent, utilities, cost of obtaining records and insurance. Additional personnel will be added to prepare and create the forty-year title plant that will further increase their cost of doing business. The stream of income from abstracts for Title Guaranty transactions has been proven necessary in order to justify the expense of building, owning and maintaining their title plant.

Lastly, pursuant to 265 IAC 9.7(8)(a)4 the Board has taken into consideration the five professional references from licensed Iowa attorneys, and five lenders and/or real estate brokers attesting to Davis County Abstract & Title, L.L.C.'s ability to abstract and the desirability of competition in the office. These references speak to the quality and integrity of the management and staff at DCAT and their ability to provide quality,

reliable abstracting services. The Board has also taken into consideration that the Iowa Land Title Association has provided a letter of support in favor of the Board granting the DCAT waiver.

Considering all of these factors above, the Board finds that DCAT has established that the provisional waiver of the 40-year plant requirement meets the guidelines for granting a provisional waiver set out in 265 IAC 9.7(8)(a)1-4.

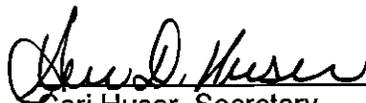
### RULING

DCAT asks the Board for a temporary waiver of the title plant requirement to allow it to participate in the Title Guaranty program as an abstractor while building a title plant. The Board also notes that granting a provisional waiver of the title plant requirement has long-standing precedent in prior Board actions. Historically, when this Board has granted provisional title plant waivers it places requirements on the abstractor to have a plant built within a certain period. Provisional title plant waivers have allowed abstractors to generate revenues, build businesses, and meet customer needs, while providing abstractors time to either create or complete tract indexes.

This provisional waiver allows DCAT to provide abstracting in Davis County while building a title plant, the use of which furthers the public purpose of Title Guaranty. The Board finds that the provisional waiver, with the resulting title plant that will follow, will benefit buyers and lenders in Davis County through added availability of Title Guaranty, along with additional competition leading to good service, competitive pricing, and the increased use of Title Guaranty.

For the reasons set forth above, the Board grants Davis County Abstract & Title, L.L.C.'s Application for Tract Index Waiver for Davis County, subject to a requirement that the title plant be in compliance with Iowa Code §16.91(5)a by December 13, 2012.

SO RULED this 6<sup>th</sup> day of March 2012.

  
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Geri Huser, Secretary

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