

BEFORE THE IOWA FINANCE AUTHORITY, TITLE GUARANTY BOARD

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IN RE:	)	
	)	
APPLICATION FOR A TITLE PLANT AND	)	RULING GRANTING APPLICATION TO WAIVE
TRACT INDEX WAIVER BY IOWA ABSTRACT	)	TRACT INDEX REQUIREMENT
SERVICES, L.L.C.	)	
	)	

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INTRODUCTION

Iowa Abstract Services, L.L.C. (hereinafter IAS), an abstractor in Pottawattamie 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. IAS is owned by attorneys Todd Pritchard and Chad Learned. IAS purchased the title plant from Dakota Title & Escrow Co of Iowa on or about August 15, 2011. Dakota Title was a participating abstractor for twenty years, and remained so until the purchase by IAS. IAS believed that the title plant was a few months behind in the indexing of the Pottawattamie County public records. However, after the purchase and upon review determined that the title plant was over one and one half years behind. IAS stated that the tract index is complete through March 2010, and it owns the records from that time to July 2011. IAS notified Title Guaranty of the gap in the title plant, and asked to come before the Title Guaranty Board and request a waiver of the title plant requirement. IAS came before the Title Guaranty Board on December 13, 2011 and requested a waiver. The waiver requested is temporary because they are in the process of updating an existing title plant to make it up-to-date to comply with Title Guaranty requirements. 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:
- Iowa Abstract Services, L.L.C.'s Application for Waiver.
  - Three letters of support of the Application for Waiver.
  - One letter in opposition of the Application for Waiver.
  - Recommendation from Title Guaranty Director granting the waiver for a one year.

On December 13, 2011, the Board held a hearing on IAS's Application for Waiver. The following individuals appeared before the Board: Todd Pritchard and Chad Learned from IAS. Mr. Pritchard introduced

two of their employees (Susan and Kurt) also in attendance at the meeting.

## 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 section 1 above, pursuant to 265 IAC 9.7(8)a the Board must also find all of 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 IAS 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 Iowa Abstract Services, 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.

The stream of income from abstracts for Title Guaranty transactions has been proven necessary in order to justify the expense of updating, owning and maintaining their title plant. The Board concludes that these

hardships, including the financial hardship, does constitute a hardship under Iowa Code §16.91(5)"b" and 265 IAC 9.7(7)(a). IAS has stated that a most of the abstracting orders in Pottawattamie County are for properties that have mortgages that are sold on the secondary market which require some type of title coverage. As stated earlier, the title plant was not as complete as originally believed, and IAS purchased the title plant with the intent to bring the title plant up-to-date. IAS 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 capital. There are significant expenses regarding payroll, utilities, cost of obtaining records, insurance as well as the cost of updating the abstracting software. Additional personnel will be added to update the forty-year title plant that will further increase their cost of doing business.

***B. Has IAS 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 Iowa Abstract Services, L.L.C. is clearly in the public interest.

The Board finds that another up-to-date title plant in Pottawattamie County will create competition and a choice for consumers as it relates to Title Guaranty coverage. Currently, there is only one up-to-date title plant in Pottawattamie County, as well as several Nebraska based title insurance companies that do business in Pottawattamie County. IAS has stated that their goal is to bring their plant up-to-date and provide abstracts at a more competitive price than the title insurance companies that are in that market. The business model of IAS will also create more availability of Title Guaranty coverage and Title Guaranty services in Pottawattamie 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 Guaranty. Further, the Board finds that IAS has demonstrated its ability to abstract competently in a way that will be in the public interest based on the Application, the letters of support, and the testimony provided at the meeting. In addition, the Board finds it relevant that this Provisional Waiver request is to update a relatively short gap found in a title plant that was previously approved by Title Guaranty.

Considering all of these factors, the Board finds that IAS 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 IAS 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 IAS has provided ample evidence that they intend to bring their title plant up-to-date and complete which meets the requirement in 265 IAC 9.7(8)(a)2. IAS does own and operate a title plant with over forty years of records indexed into the plant. However, the plant is currently approximately a year and a half behind in their indexing of the county records. IAS has the records and images on disks and data files for the time period of March 2010 to July 15, 2011 and are purchasing the other records needed to complete their plant. They have the software to create and maintain the title plant, and they are researching whether to update that system to even newer software. They are also planning to hire an employee or employees to assist in the updating and maintenance of the title plant. They have provided proof backing up their expectation that a title plant can be up-to-date within one year.

The Board finds that IAS has shown that the majority of the abstracts in Pottawattamie County are for properties that have mortgages that are sold on the secondary market which require some type of title coverage. At least one high volume real estate broker has stated that they will use IAS if they can obtain Title Guaranty coverage for their clients and their lenders. Without this business and the ability to abstract for Title Guaranty transactions, IAS has shown that it would not make financial sense for them to complete and maintain the existing partial title plant. This evidence of significant financial loss due to the inability to provide abstracts for the division meets the requirement found in 265 IAC 9.7(8)(a)(2).

The Board finds that IAS 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 found in 265 IAC 9.7(8)(a)(3). There are significant ongoing expenses regarding payroll, utilities, obtaining records, insurance as well as the cost of updating the abstracting software. Additional personnel will be added to make the forty-year title plant up-to-date and 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 updating, owning and maintaining their title plant.

Lastly, pursuant to 265 IAC 9.7(8)(a)(4) the Board has taken into consideration the two professional references from licensed Iowa attorneys attesting to Iowa Abstract Services, L.L.C. 's ability to abstract and the desirability of competition and added Title Guaranty presence in the Pottawattamie County market. Also, at least one real estate broker has stated that they will use IAS if they can obtain Title Guaranty coverage for their clients as well as their lenders. 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 IAS waiver. Further, the Board has read the letter sent to the Board by Abstract Guaranty Company from Pottawattamie County and has given it very careful consideration. With all of these things in mind, the Board finds that the requirement found in 265 IAC 9.7(8)(a)(4) has been met.

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

### RULING

Iowa Abstract Services, L.L.C. 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 bringing the existing title plant up-to-date to comply with Title Guaranty requirements. 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 IAS to provide abstracting in Pottawattamie County while making the existing title plant up-to-date to comply with Title Guaranty requirements, the use of which furthers the public purpose of Title Guaranty. The Board finds that the provisional waiver, with the resulting up-to-date title plant that will follow, will benefit buyers and lenders in Pottawattamie 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 Iowa Abstract Services, L.L.C.'s Application for Waiver for Pottawattamie 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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