
IN RE:

APPLICATION FOR A TITLE PLANT AND
TRACT INDEX WAIVER BY JAY SOMMERS.

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RULING GRANTING APPLICATION TO WAIVE
TRACT INDEX REQUIREMENT

INTRODUCTION

Jay Sommers (hereinafter Sommers), an attorney licensed to practice law in Iowa, has applied for a waiver (hereinafter 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 (TG) program (hereinafter Application). This type of waiver request is described in 265 IAC 9.7(8)(b) "Permanent waivers for attorneys". Mr. Sommers is a Title Guaranty participating attorney in good standing with TG. The Law Office of Jay Sommers, P.C. is in Davenport, Iowa.

For the reasons explained below, the Title Guaranty Board (hereinafter Board) grants the Waiver.

RECORD

The record before the Board includes the following:

- Jay Sommer's Application for Waiver.
- Other documents submitted with the Application
- Nine letters of support for the grant of a Waiver.
- Two letters not in support the grant of a Waiver.
- Recommendation from Title Guaranty Director Geri Huser to grant the Waiver.
- Board Minutes and an audio recording from the October 8, 2013 Board meeting.

On October 8, 2013 the Board held a hearing on Sommer's Application for Waiver. Deputy Director White summarized the materials in the Board packet, as well as the public comment received the day of the board meeting regarding the Application. Mr. White introduced Mr. Sommers to the Board. Mr. Sommers appeared before the Board and explained the reason for his Application as well as giving details on his background as an abstractor. At the conclusion of this presentation the meeting was opened to take any comments from the public. The Board then asked Director Huser for her recommendation. Director Huser recommended that the Board grant the Application for Waiver. The Board then entertained a motion to approve the Application for Waiver, and had additional discussions prior to bringing the motion to a vote. The motion failed on a 2-1 vote. There were further discussions between Mr. Sommers and the Board. A motion was made and passed to reconsider the prior motion. The Board then entertained a

motion to approve the Application for Waiver, and the motion approved by a 3-0 vote.

The record includes the Board minutes and an audio recording of the October 8, 2013 hearing. The audio recording is available to the public at the Title Guaranty office.

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, 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)b.

- 1) Pursuant to Iowa Code §16.91(5)“b” and 265 IAC 9.7(7) the division board may grant a 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.*
- 2) For attorney applicants with experience abstracting under the supervision and control of an exempt attorney-abstractor, the board shall consider, at a minimum, the following:
 - *The applicant's abstract experience. The board shall give considerable weight to an applicant's experience abstracting under the personal supervision and control of an exempt attorney-abstractor with whom the applicant has had a close working relationship or with whom the applicant is a legal partner or associate.*
 - *Professional references. The board shall give considerable weight to a recommendation from the exempt attorney-abstractor or grandfathered attorney who personally supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract.*
 - *Samples of abstracts prepared by the applicant.*
 - *The division board shall give consideration to the number of participating abstractors physically located in the county or counties where the applicant seeks to abstract in determining whether a waiver should be granted.*

ANALYSIS

A. Has Jay Sommers satisfied the requirements pursuant to Iowa Code §16.91(5)“b” and 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 Jay Sommers.

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.*

Mr. Sommers stated that it would be a financial hardship to establish a title plant because the cost was estimated to exceed \$80,000 per county. Further he stated that the time and attention needed to build plants would severely hinder his ability to practice law. Mr. Sommers believes that with a Waiver he will be able to provide a quality abstract in a timely manner so clear, marketable title can be reflected. He noted that the building of a title plant to do abstracting was outside the norm for a Scott County abstracting attorneys practice and he would suffer financially without the ability to abstract for Title Guaranty purposes. Additionally, he noted that in Scott and the neighboring counties the attorneys that are abstracting for Title Guaranty are approaching retirement age and a Waiver would allow him to continue to provide a quality work product for Title Guaranty transactions in their absence.

In March 2012, Mr. Sommers took over Mr. Engelmann's law practice consisting of about 90% real estate transactional work. Mr. Sommers additionally states that this practice came with over 20,000 abstracts of title in the office and he wants a Waiver to be able to provide additional abstracting services to those owners of the abstracts and that the inability to do so would cause his practice (and service to his clients) to suffer and cause him a financial hardship. He stated that if he was not allowed to abstract for Title Guaranty, it would be a hardship for him that would cause his practice to suffer. Mr. Sommers also believes that he needs to be able to provide a "full service" real estate practice, including abstracting, to best serve his clients.

Mr. Sommers showed that complying with the title plant requirement would be a hardship which would cause him deprivation, suffering, adversity, or long-term adverse financial impact. This deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement is more than minimal when considering all the circumstances.

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).

B. Has Jay Sommers established that the 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 Waiver of the 40-year plant requirement to Jay Sommers is clearly in the public interest.

Public interest is defined in 265 IAC 9.7(2). This states that "Public interest" means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of title guaranties throughout the state, making title guaranties more competitive than

out-of-state title insurance, increasing the division's market share, improving the quality of land titles, protecting consumers, and encouraging maximum participation by participating abstractors and participating attorneys physically located in all 99 counties.

The Board finds that a granting a Waiver to Jay Sommers will be beneficial to the public as a whole. His ability to abstract will maintain competition and a choice for Title Guaranty customers, and also create more availability to title guaranties and Title Guaranty services, while reducing the use of title insurance. In addition, the attorney-abstractor process is engrained in the Scott County business model that allows title guaranties to be offered in a quality manner with a low cost that keeps title guaranty more competitive than out-of-state title insurance. This, in turn, protects consumers by keeping the abstracting/attorney/title guaranty system in place. This Board notes that in time due to retirements or deaths there will be fewer and fewer of the original "grandfathered" attorneys abstracting in Scott County and this Board is cognizant of the public harm that might occur if no abstracting-attorneys were available to meet the needs of the public in the Scott County and surrounding markets.

The Board notes that in Scott County there is a "mentorship" system set up within the Scott County Bar Association. In that system, the abstractor being mentored makes application to that group, and is judged by his peers on the quality of his abstracting based on certain testing they require of the abstractor being mentored. The application and test results are reviewed by the Real Estate Committee, and their recommendation is passed on to the Scott County Bar Association Executive Council. Based on a review of the application, his sample/test abstracting, the Committee recommendation, and the personal knowledge and observation of other attorney abstractors in that community, the Executive Council unanimously endorsed Mr. Sommers request to Title Guaranty to be given a Waiver.

The Board finds that Jay Sommers has demonstrated his 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, the Scott County Bar recommendation, and the testimony provided at the meeting.

Considering all of these factors, the Board finds that Jay Sommers 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 Jay Sommers established that a waiver of the 40-year plant requirement described in Iowa Code §16.91(5)"a"(2) meets the waiver requirements found in 265 IAC 9.7(8)(b)(4)(1)?

The division board may grant a Waiver to an attorney applicant with experience abstracting under the supervision and control of an exempt attorney-abstractor, and in doing so the board shall consider, at a minimum, the following pursuant to 265 IAC 9.7(8)(b)(4)(1):

- *The applicant's abstract experience. The board shall give considerable weight to an applicant's experience abstracting under the personal supervision and control of an exempt attorney-abstractor with whom the applicant has had a close working relationship or with whom the applicant is a legal partner or associate.*
- *Professional references. The board shall give considerable weight to a recommendation from the exempt attorney-abstractor or grandfathered attorney who personally supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract.*
- *Samples of abstracts prepared by the applicant.*
- *The division board shall give consideration to the number of participating abstractors physically located in the county or counties where the applicant seeks to abstract in determining whether a waiver should be granted.*

The Board finds that Jay Sommers has met the requirements set in 265 IAC 9.7(8)(b)(4)(1) pursuant to the following evidence, references and findings shown in the following paragraphs.

The Board finds that Mr. Sommers has provided sufficient evidence that he has ample abstracting experience that has spanned over five years and resulted in the creation of a large number of abstracts or their continuations. Mr. Sommers provided an employment history that stated from 1999 to 2007 and from the end of 2011 to present he was in general practice as an attorney with a large share of his practice consisting of real estate work including title searches, abstracting, platting and closings. He provided testimony that he does searches of the public records on an almost daily basis primarily in Scott County but also in the surrounding Counties. The Board further finds that the professional references attached to his Application are credibly vouching for his ability to competently abstract. In addition to a number of references from other attorneys and lenders, the Scott County Bar Association Executive Council also reviewed Mr. Sommer's Application and gave this Board their recommendation that he be given a Waiver.

Further, the Board has considered the written recommendation of his supervising attorneys Marc Engelmann and Marc Gellerman when they state to this Board their opinion that Mr. Sommers possesses the training, knowledge, ability and ethics required to be an abstractor. His mentor Marc Engelmann wrote a letter of recommendation attesting to Mr. Sommers completing abstracts and searches under his supervision and that this abstracting was done with a high level of competence. His other mentor Marc Gellerman stated in his

recommendation that Mr. Sommers level of competence is equal to that of existing abstractors in their community and that he was extremely detailed in his abstracting, all while acting in compliance with Iowa Land Title Standards (Blue Book) as well as all other abstracting requirements. Both mentors noted that they had been abstractors for Title Guaranty since 1986 and that they supported Mr. Sommers in his effort to attain a Waiver. Both mentors stated that their observations of Mr. Sommers were based on their personal observations and interactions with him during the span of over five years, well over the requisite two year "mentorship" period that this Board is directed to consider.

Sample abstracts were made available to the Board for review and this Board finds them to be of good quality. Additionally, the Board does acknowledge that there are other abstractors available to provide abstracting in Scott County. However, providing a process to replace attorney-abstractors doing business by "mentored" attorney-abstractors will not have an adverse impact on the market. As stated previously, this Board is cognizant of the public harm that might occur if no abstracting-attorneys were available to meet the needs of the public in the Scott County and its surrounding markets.

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

RULING

Jay Sommers asks the Board for a Waiver of the title plant requirement to allow him to participate in the Title Guaranty program as an abstractor. This Waiver allows Mr. Sommers to provide abstracting in Iowa the use of which furthers the public purpose of Title Guaranty. The Board finds that the Waiver will benefit buyers and lenders through continued availability of Title Guaranty, along with additional competition leading to better service, more competitive pricing, and the increased use of Title Guaranty.

For the reasons set forth above, the Board grants Jay Sommer's Application for Waiver of the 40-year title plant and tract index requirement.

SO RULED this 8th day of October, 2013.



Pat Schneider, Title Guaranty Board Chair
(Seal)



Geri D. Huser, Secretary

