

BEFORE THE IOWA FINANCE AUTHORITY,
IOWA TITLE GUARANTY BOARD

IN RE:)	
APPLICATION FOR PROVISIONAL TITLE)	RULING GRANTING APPLICATION FOR
PLANT AND TRACT INDEX WAIVER BY)	PROVISIONAL TITLE PLANT AND TRACT
CLAY COUNTY ABSTRACT, LLC.)	INDEX WAIVER
)	

INTRODUCTION

Clay County Abstract, LLC (hereinafter CCA), applied for a temporary waiver of the 40-year title plant and tract index requirement pursuant to Iowa Code §16.91(5)(b). A temporary plant waiver allows the applicant to become a participating abstractor in the Iowa Title Guaranty (hereinafter ITG) program in Clay County while they build their title plant. This type of temporary waiver request is described in 265 IAC 9.7(8)"a" "Provisional Waivers".

The Iowa Title Guaranty Board (hereinafter Board) having reviewed the record as well as hearing testimony on the matter, grants the provisional title plant waiver, subject to the requirements set out in this ruling

RECORD

The record before the Board includes the following:

- CCA's Application for Waiver.
- Letter from CCA dated June 2, 2014 describing progress made in the prior month.
- Four letters in support of the Application for Waiver, including two from attorneys.
- Recommendation from the ITG Director to grant the waiver for two years.
- Audio recording of the June 4, 2014 Board meeting.

On June 4, 2014, the Board held a hearing on CCA's Application for Waiver. The following individuals appeared before the Board: Ruby Nitzel, Bill Nitzel, and Barry Sackett from CCA. Ms. Nitzel is the Managing Member of CCA. Mr. Nitzel and Mr. Sackett are Members of CCA.

APPLICABLE LAW, ANALYSIS AND RULING

The 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. To do this, the Board must make the findings required under Iowa Code §16.91(5)(b), 265 IAC 9.7(7)"a", and 265 IAC 9.7(7)"b"; and determine that the Applicant

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 Board may grant a provisional waiver when the Board finds both of the following:

- a) The title plant requirement described in Iowa Code §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; and
- 4) Professional references from two licensed Iowa attorneys or one participating plant-abstractor attesting to the applicant's ability to abstract.

Analysis

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

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.

CCA has stated that the title plant requirement is causing their new company a financial hardship due to its incurring significant expenses regarding payroll, rent, utilities, insurance, software costs, and the cost of obtaining records. CCA stated that by law, practice or policy their potential customers will not do business with an abstractor that is not an ITG participant. Without a title plant waiver, they will be unable to compete for the abstract orders in Clay County transactions which require title guaranties, and that the cost of start-up of the business and the loss of income due to not being an ITG participant is a financial hardship. CCA states that this stream of income is necessary in order to cover the current expenses of building the title plant. 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 CCA under Iowa Code §16.91(5)(b) and 265 IAC 9.7(7)"a".

BEFORE THE IOWA FINANCE AUTHORITY,
IOWA TITLE GUARANTY BOARD

IN RE:)	
APPLICATION FOR PROVISIONAL TITLE)	RULING GRANTING APPLICATION FOR
PLANT AND TRACT INDEX WAIVER BY)	PROVISIONAL TITLE PLANT AND TRACT
CLAY COUNTY ABSTRACT, LLC.)	INDEX WAIVER
)	

INTRODUCTION

Clay County Abstract, LLC (hereinafter CCA), applied for a temporary waiver of the 40-year title plant and tract index requirement pursuant to Iowa Code §16.91(5)(b). A temporary plant waiver allows the applicant to become a participating abstractor in the Iowa Title Guaranty (hereinafter ITG) program in Clay County while they build their title plant. This type of temporary waiver request is described in 265 IAC 9.7(8)"a" "Provisional Waivers".

The Iowa Title Guaranty Board (hereinafter Board) having reviewed the record as well as hearing testimony on the matter, grants the provisional title plant waiver, subject to the requirements set out in this ruling

RECORD

The record before the Board includes the following:

- CCA's Application for Waiver.
- Letter from CCA dated June 2, 2014 describing progress made in the prior month.
- Four letters in support of the Application for Waiver, including two from attorneys.
- Recommendation from the ITG Director to grant the waiver for two years.
- Audio recording of the June 4, 2014 Board meeting.

On June 4, 2014, the Board held a hearing on CCA's Application for Waiver. The following individuals appeared before the Board: Ruby Nitzel, Bill Nitzel, and Barry Sackett from CCA. Ms. Nitzel is the Managing Member of CCA. Mr. Nitzel and Mr. Sackett are Members of CCA.

APPLICABLE LAW, ANALYSIS AND RULING

The 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. To do this, the Board must make the findings required under Iowa Code §16.91(5)(b), 265 IAC 9.7(7)"a", and 265 IAC 9.7(7)"b"; and determine that the Applicant

B. Has CCA 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 CCA is clearly in the public interest.

Public interest is defined in 265 IAC 9.7(7)"b"(1). 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 new title plant in Clay County creates competition as well as an opportunity for consumer choice. Currently, there is only one title plant in Clay County. The CCA business model increases availability of title guaranties and ITG services in Clay County. Once the title plant is complete, 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. Further, the Board finds that through the Application, the letters of support, and the testimony provided at the meeting that CCA has demonstrated its ability to abstract competently in a way that will be in the public interest. CCA staff has worked together in Clay County for the past ten years, and have a combined abstracting experience of approximately forty years which attests to their knowledge of the Monroe County records.

Considering all of these factors, the Board finds that CCA has established that a provisional 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 CCA 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 may grant a provisional waiver when the applicant provides all of the following waiver requirements found in 265 IAC 9.7(8)"a"(1-4):

- 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; and
- 4) Professional references from two licensed Iowa attorneys or one participating plant-abstractor attesting to the applicant's ability to abstract.

The Board finds that CCA has provided ample evidence that their title plant will be built in Clay County which meets the requirement shown in 265 IAC 9.7(8)"a"(1). CCA is already in the process of obtaining electronic copies of indices of recorded documents from the Clay County Recorder, as well as scanning the Clay County Recorder's indices. They have purchased the software to create and maintain the title plant made from these electronic indices. 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 two years.

The Board finds that CCA has shown that many of the abstracts in Clay County are for transactions which require title guaranties. CCA would not be allowed to compete for much of the abstract business in Clay County if they are not a participating abstractor. This meets the requirement shown in 265 IAC 9.7(8)"a"(2).

The stream of income from abstracts for ITG transactions and for processing ITG Certificates as a field issuer has been proven necessary in order to justify the expense of building, owning and maintaining their title plant. There are significant expenses regarding payroll, rent, utilities, insurance, software costs, as well as the cost of obtaining records. This meets the requirement shown in 265 IAC 9.7(8)"a"(3).

Lastly, pursuant to 265 IAC 9.7(8)"a"(4) the Board has taken into consideration the two professional references from licensed Iowa attorneys, and from one lender, all of which attest to Ms. Nitzel and CCA's ability to abstract and the high quality of work they have received in the past from Ms. Nitzel. These references speak to the quality and integrity of CCA and its staff and their ability to provide quality, reliable abstracting services.

Considering all of these factors above, the Board finds that CCA 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).