

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
MONROE COUNTY ABSTRACT COMPANY)	INDEX WAIVER
)	
)	

INTRODUCTION

Monroe County Abstract Company (hereinafter MCAC), 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 Monroe 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 limitations, restrictions, or requirements set out in this ruling.

RECORD

The record before the Board includes the following:

- MCAC's Application for Waiver.
- ITG Deputy Director Matt White, Esq.'s legal analysis of Application, law and facts.
- Three letters in support of the Application for Waiver, including two from attorneys.
- Other comments in support of the Waiver from oral testimony at the Board meeting.
 - David Truitt, owner of title plants in Davis and Wapello Counties
- Recommendation from the ITG Director Geri Huser to grant the waiver for two years.
- Audio recording of the August 6, 2014 Board meeting and hearing on MCAC's Application for Provisional Waiver.
- Supplemental Record.

APPLICABLE LAW, ANALYSIS AND RULING

Abstracting is not regulated in Iowa by any law or other oversight, and anyone can freely abstract with or without a title plant anywhere in the state, in any manner they so choose. Neither the Iowa Land Title Association Abstracting Standards nor the Iowa State Bar Association Title Standards require an abstractor to be a participating member of ITG. A Waiver granted by the Board does not grant an abstractor any additional rights or license to allow them to abstract in Iowa. A Waiver simply allows ITG to use the abstracting done by attorney or abstractor without the abstract being produced from the use of an up-to-date title plant.

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. 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:

1. The title plant requirement described in Iowa Code §16.91(5)(a)(2) imposes a hardship to the abstractor or attorney; and
2. The waiver is:
 - a) Clearly in the public interest; or
 - b) 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 Iowa Title Guaranty;
- 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.

Deputy Director White has a process wherein he reviews an Application prior to it being submitted to this Board and the public. If there are questions that remain unanswered, or that he feels are insufficiently answered for the Board to make their ruling, then Mr. White requests additional information from the Applicant. He then makes his legal determination related to whether the applicable waiver factors have been met. This information is presented to the Director so they can make a Director Recommendation. At the Board meeting, Mr. White reviewed the waiver requirements, and set out how facts in the Application addressed each factor required to be considered by the Board. In addition, Mr. White submitted a Supplemental Report to reflect the information that he relied upon when he recommended the Board grant the provisional waiver application.

ANALYSIS

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

The Board concludes that MCAC has established hardship under Iowa Code § 16.91(5)(b) and 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.

MCAC stated that the title plant requirement is causing their new company (a sole proprietorship) a financial hardship due to incurring significant expenses regarding payroll, rent, utilities, insurance, software costs and the cost of obtaining records without the ability to generate revenues. MCAC stated that they do not even have enough money to purchase the software and hardware necessary to build a tract index electronically.

ITG staff and Board experience, and testimony provided at the Board meeting, reflect that although a cost to build a complete title plant in Monroe County was not enumerated in dollars and cents, the cost to build a title plant would fluctuate due to differences in the size of the county, their volume of recordings, and the county differences in ease of record conversion to a title plant. The Applicant has estimated that it will be a two year process to build the title plant wherein the Applicant would be receiving limited to no revenues due to lack of ITG participation. According to the 2010 Census numbers, Monroe County is Iowa's 13th least populated county.

The Board finds that the costs to build a 40-year title plant in a small-sized Iowa county is between \$40,000-\$75,000 each year for the two years required to build the title plant. Thus, the total cost of building a title plant in a small-sized county ranges between \$80,000-\$150,000. The Board further finds that that the costs to build a 40-year title plant in a medium-sized Iowa county is between \$50,000-\$130,000 each year for the two years required to build the title plant. Thus, the total cost of a building a title plant a medium-sized county ranges between \$100,000-\$260,000. It also finds that the costs to build a 40-year title plant in a large-sized Iowa county would be substantially higher than a middle-sized county due to higher labor, rental costs, and the sheer volume of records. The Board used the estimated costs listed below when estimating the costs to build a 40-year title plant for a small-sized Iowa county:

- a. Estimated Year One Costs
 - i) \$2,500 for records migration.
 - ii) \$46,080 (\$3,840 monthly for two full-time staff members at \$12/hour, including benefits).
 - iii) \$7,800 office rent (\$650 monthly).
 - iv) \$1,500 insurance.
 - v) \$3,000 initial outlay for software.
 - vi) \$2,000 initial outlay for hardware.
 - vii) \$2,000 initial outlay for furnishings.
 - viii) \$9,000 utilities.

- ix) Total: \$73,880
- b. Estimated Year Two Costs: \$64,380
- c. Average Costs: \$69,130 annually to run office.

After considering the record, the Board finds that MCAC has established a hardship to build a 40-year title plant under Iowa Code §16.91(5)(b) and 265 IAC 9.7(7)"a".

B. MCAC has 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".

The Board concludes that granting a provisional waiver of the title plant requirement to MCAC 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.*

Because an abstracting company does not have to participate in the ITG program, MCAC can nevertheless provide abstracting services to lenders that use title insurance to insure good title to properties instead of using title guaranties. This will have the effect of reducing the use of title guaranties in Iowa. Moreover, ITG staff is also aware that many customers will not do business with abstractor that is not a participating abstractor in the ITG program. As a result, ITG will be deprived of issuing and Iowa consumers will be deprived of obtaining title guaranties on those properties. This runs contrary to the express public purpose of maximizing the use of title guaranties.

Further, the Board finds that a new title plant in Monroe County creates competition as well as an opportunity for consumer choice. Currently, there is only one title plant in Monroe

County. There was testimony provided at the Board meeting that claimed there were quality, price, and/or service issues with the other abstractor, and that local bankers in Monroe County had “begged” the affiant to build a title plant outside of his current county so these bankers unmet needs could be satisfied. Additionally, ITG staff was called on 6-19-2014 by an employee of an ITG real estate attorney abstractor who expressed their excitement that there was a new abstractor in Monroe County. They stated that they used to work with Pat at Graham Abstract and that there are lenders lined up to use MCAC as an abstractor if they obtain an ITG participation number. There were only 78 ITG Certificates issued between 7-1-13 and 9-1-14 on mortgages in Monroe County, leading to the belief that some transactions occurring outside the abstract/attorney/ITG process.

The Board also finds that the public interest supports the provisional waiver because MCAC will be producing abstracts prepared using a 40-year title plant after the provisional waiver expires. Once the title plant is complete, MCAC will be able to search the chain of title from a forty-year title plant, which is the preferred method of providing title evidence.

The Board also finds that the provisional Waiver is clearly in the public interest because it provides competent abstracting services. MCAC has demonstrated its ability to abstract competently in a way that will be in the public interest. MCAC staff has worked together in Monroe County for the past ten years and have a combined abstracting experience of approximately fifty years, all of which attests to their knowledge of the Monroe County records. MCAC staff have established relationships with local attorneys, real estate brokers, and bankers in the area. And MCAC stated that they intend to maintain those good relationships, and will continue to strive to protect their customers and provide the best service possible.

Considering all of these factors, the Board finds that MCAC 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. MCAC has 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 MCAC has provided ample evidence that their title plant will be built in Monroe County that meets the requirement shown in 265 IAC 9.7(8)"a"(1). Ms. Graham did state that there are three staff members working full time on the plant building process, and that they have already obtained a portion of the records from the Monroe County Recorder and are also in the process of copying the documents to enter into their title plant. They can obtain the documents to flow into their tract index directly from the County Recorder's systems from 1999 to present. They are paying a fee to access other records. The Applicant also stated that she has rented office space downtown to house their current operations. This consists of 5 offices, with 3 currently in use, and that they are currently using their own computers and printer until they generate enough revenue to purchase the necessary software and computer network. The evidence supports their expectation that a title plant will be built.

The Board finds that MCAC has shown that many of the abstracts in Monroe County are for transactions that require title guaranties. Without a provisional title plant waiver, MCAC

would not be allowed to compete for much of the abstract business in Monroe County, and they would not be an issuer of ITG Commitments and Certificates. The Board also finds that a provisional waiver is needed so that revenue can be produced to offset the expense of building the title plant, and to address the delay of offering abstracting and title services in Monroe County while a plant is being built. This meets the requirement shown in 265 IAC 9.7(8)"a"(2).

The Board also finds that MCAC has shown that the stream of income from abstracts for ITG transactions and for processing ITG Certificates as a field issuer is necessary to justify the expense of building, owning and maintaining their title plant. Significant expenses include: business expenses, staffing, office, hardware and software costs, and the cost of obtaining records. These expenses have been previously discussed in this Written Ruling. This meets the requirement shown in 265 IAC 9.7(8)"a"(3).

Finally, pursuant to 265 IAC 9.7(8)"a"(4) the Board has considered two professional references from licensed Iowa attorneys, and a professional reference from the Iowa Land Title Association. The attorneys attest to Ms. Graham's and MCAC's ability to abstract and the high quality of work they have received in the past from Ms. Graham. And the ILTA expressed their belief a search from a title plant produces a superior product. These references speak to the quality and integrity of MCAC and its staff and their ability to provide quality, reliable abstracting services. Ms. Graham and her staff have over 50 years of experience related to the Monroe County records.

Considering all of these factors, the Board finds that MCAC 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

For the reasons set forth above, the Board grants Monroe County Abstract Company's Application for Provisional Title Plant and Tract Index Waiver for Monroe County, subject to the following limitations, restrictions or requirements:

- 1) MCAC shall provide ITG with monthly status reports in sufficient detail to allow for the tracking of the progress towards completion of the title plant. ITG Staff will provide an update to the ITG Board at each quarterly Board meeting that will include a summary of the monthly reports and communications with Patricia Graham or another authorized member of MCAC.
- 2) MCAC shall provide verification within 6 weeks of Board approval of the provisional title plant waiver that the Monroe County records have been obtained and/or are available to be used in the title plant building process. If the records are not obtained within 6 weeks MCAC should provide an amended plan.
- 3) MCAC shall provide within 6 weeks verification of software purchase, company and activation date.
- 4) MCAC is granted until July 3, 2016 for the building of the plant. At least 6 weeks prior to July 3, 2016 MCAC should provide ITG three dates during the work week for a title plant inspection by ILTA. The dates provided must allow ample time for the plant to be inspected and certified as complete.
- 5) Pursuant to 265 IAC 9.7(10), MCAC's title plant must be verified by the Board as complete and up-to-date prior to August 3, 2016. MCAC is responsible for reporting to ITG any change to ownership or location of the title plant as well as any problems related to the title plant certification.

SO RULED this 7th day of October 2014.



Patricia Schneider, Iowa Title Guaranty Board Chair

(seal)



David Jamison, Iowa Title Guaranty Board Secretary

