

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
BLUE ADVANTAGE TITLE SYSTEMS, LLC)	INDEX WAIVER
)	

INTRODUCTION

Blue Advantage Title Systems, LLC d/b/a Bill Blue & Associates (hereinafter BTS), 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 Polk 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:

- BTS's Application for Waiver.
- ITG Deputy Director Matt White, Esq.'s legal analysis of Application, law and facts.
- Five letters in support of the Application for Waiver, including two from attorneys, and one letter in opposition.
- Other comments in support of and against the Waiver from oral testimony at the Board meeting.
 - William Blue, of Blue Advantage Title Systems, LLC
 - Jim Nervig, of Brick Gentry Law Firm
 - Charles Hendricks, Charles Hendricks Law Firm
 - Joan Johnson, Iowa Title Company

- Rande Slings, Iowa Title Company
- Tom Bernau, abstract offices in Boone, Webster, and Polk County
- 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 of BTS's Application for Waiver.
- Supplemental Report.

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 Waiver application. 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. BTS has satisfied the hardship requirements pursuant to Iowa Code §16.91(5)(b); 265 IAC 9.7(7)"a."

The Board concludes that BTS 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.

BTS stated that the title plant requirement is causing their new company a financial hardship due to incurring significant expenses regarding staffing, office, hardware and software costs, and the cost of obtaining records. In the Application and the testimony from Mr. Blue, BTS stated that they are financially unable to complete the entire title plant; however, they are financially prepared to complete the title plant from 1992 to present because those records are in a format that can be more easily incorporated into a title plant. In addition to the records from 1992 to present, there are between 5 and 6 million additional images necessary to complete the title plant. Mr. Blue also stated that BTS could not finance five years of title plant building without having an ITG abstractor number so that revenues could be generated while the plant is being completed.

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 middle-sized Iowa county:

- a. Estimated Year One Costs
 - i) \$5,000 for records migration.
 - ii) \$76,800 (\$6,400 monthly for two full-time staff members at \$20/hour, including benefits and insurance).
 - iii) \$18,000 office rent (\$1,500 monthly).

- iv) \$5,000 initial outlay for software.
- v) \$5,000 initial outlay for furnishings.
- vi) \$12,000 utilities.
- vii) Total: \$126,800
- b. Estimated Year Two Costs: \$88,800
- c. Average Costs: \$107,800 annually to run office.

In addition, the costs of abstracting in Polk County are significantly higher than in most parts of the state. For example, in Polk County, a name search can cost about \$165 for up to two buyers with the same last name and \$265 for two buyers with different last names, while a name search in other counties may be as low as \$30.

In addition to the financial hardship, the Board finds that the two (or more) years that it will take BTS to build a 40-year title plant and to acquire between 5 and 6 million images to complete the title plant constitutes a hardship.

For these reasons, the Board finds that BTS has established a hardship under Iowa Code § 16.91(5)(b) and 265 IAC 9.7(7)"a."

B. BTS has established that the provisional waiver of the 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 BTS 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.

When deciding whether a Waiver of the 40-year title plant is clearly in the public interest, the Board notes that abstracting businesses are not licensed or regulated by any governmental

entity, including ITG. Put in other terms, an abstractor need not be a participating abstractor in the ITG program to prepare abstracts in Iowa. Consequently, anyone can operate an abstracting business with or without a title plant. Neither the Iowa Land Title Association Abstracting Standards nor the Iowa State Bar Association Title Standards requires an abstractor to be a participating member of ITG to prepare abstracts.

Because an abstracting company does not have to participate in the ITG program, BTS 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 title guaranty 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.

In addition, the overwhelming percentage of ITG orders will only need to be done from the completed portion of the title plant (1992 to present). Given the number of the homes sold or refinanced in Polk County since 1992, there is little need for a title plant to go back into an earlier timeframe for most transactions because most abstracts would be continuations of abstracts prepared after 1992 instead of root of title abstracts. If BTS needs to search for transactions before 1992, it will have to contract with another abstractor that maintains a 40-year title plant or conduct a direct search of the public records. Granting this waiver would advance the express public purpose of maximizing the use of title guaranties while BTS completes its 40-year title plant.

Further, the Board finds that a new title plant in Polk County creates competition as well

as an opportunity for consumer choice. Currently, there are three title plants in Polk County. ITG Staff took into consideration that a fourth abstractor present in the largest county in the state would not seem out of the ordinary, with recording volume in Polk County overwhelming the numbers in a typical Iowa county.

The Board also finds that the public interest supports the provisional waiver because BTS will be producing abstracts prepared using a 40-year title plant after the provisional waiver expires. Once the title plant is complete, BTS will be able to search the chain of title from a forty-year title plant, which is the preferred method of providing title evidence. BTS is already building the title plant and will have over 20 years of it completed in the next six months and before they actually begin abstracting. Further, the provisional waiver, BTS will prepare abstracts using a title plant that has been inspected and found to be complete from 1992 to the present. Without an avenue to use that work for ITG purposes, one of the only remaining uses would be to use the work for title insurance purposes.

In addition, granting BTS's provisional Waiver application is clearly in the public interest because it provides competent abstracting services. Mr. Blue has a proven knowledge of abstracting in general and abstracting in Polk County in particular. He has had leadership roles in the Iowa Land Title Association and other groups. He has also been a leader in providing technological solutions to abstracting related issues for many years.

There were oral and written comments given at the Board meeting from Mr. Nervig (an attorney representing American Abstract, which is one of the competing Polk County abstractors) where he claimed that an abstract completed without a plant is somehow substandard compared to an abstract produced from a complete title plant. He specifically claimed that this

so-called “inferior product” would not be complete nor able to be relied upon by an attorney doing an informed and complete legal review.

The Board, however, rejects this argument. First, the abstracts used for ITG purposes will be produced from a title plant granted a provisional waiver that includes everything affecting the real estate found in the public records. Second, since the inception of ITG, about 25% of all ITG abstractors have been operating without a 40-year title plant. Third, the Iowa Code expressly allows ITG to use the abstracts produced by an abstractor exempt from the title plant requirement. Finally, if ITG discovers that abstracts used for ITG purposes are not in compliance with ITG requirements, then according to 265 IAC 9.7(12), this Board can void or cancel a waiver if it is later shown that the abstract is insufficient and not assuring that the public interests are being protected.

Further, the public interest supports granting this provisional Waiver because BTS’s technological changes that are planned will be designed to minimize mistakes. Mr. Blue described the technological changes he intends to implement to eliminate the nature of the risks and time taken when an attorney gets the abstract in a paper based form, and needs to rekey all of the information into the title opinion, and ITG Certificate.

Considering all of these factors, the Board finds that BTS 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. BTS 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 BTS has provided ample evidence that their title plant will be built in Polk County that meets the requirements shown in 265 IAC 9.7(8)"a"(1). BTS has already purchased recorded documents and indices from the Polk County Recorder from 1992 to present and will have those records imported into their title plant before commencing any abstracting. They plan to take images from film in the recorder's records prior to 1992 and digitize them in order to create the remainder of the title plant. Further, BTS has already rented office space in Des Moines. The evidence supports the expectation that BTS will be able to build a title plant.

The Board finds that BTS has shown that many of the abstracts in Polk County are for transactions that require title guaranties. Without a provisional title plant waiver BTS would not be allowed to compete for much of the abstract business in Polk County. 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 Polk 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 BTS has shown that the stream of income from abstracts for ITG transactions 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 the two professional

references from licensed Iowa attorneys—one title plant abstractor and from the Iowa Land Title Association. Both attorneys attest to Mr. Blue’s and BTS’s ability to abstract as well as the high quality of work they have received in the past. These references speak to the quality and integrity of Mr. Blue and BTS their ability to provide quality, reliable abstracting services.

Considering all of these factors, the Board finds that BTS 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”.

RULING

For the reasons set forth above, the Board grants Blue Advantage Title Systems, LLC’s Application for Provisional Title Plant and Tract Index Waiver for Polk County, subject to the following limitations, restrictions or requirements:

- 1) The provisional title plant waiver becomes effective on February 1, 2015, when Mr. Blue has authorized the ITG title plant inspection team to confirm that a title plant from 1992-current is in place. If the plant is not complete for this period Mr. Blue will submit an updated plan that shows compliance with the 1992-present plant and the completion of the title plant. This updated plan will be submitted to the ITG Board for consideration at its March 2015 board meeting.
- 2) BTS shall provide ITG with monthly status reports in sufficient detail to allow for tracking the progress towards completion of the title plant. ITG Staff will provide an update to the ITG Board at each quarterly ITG Board meeting that will include a summary of the monthly reports and communications with Bill Blue or other authorized representative of BTS.
- 3) BTS shall provide verification within six months of February 1, 2015 that the Polk County records have been obtained and/or are available for the title plant building process and provide a report of the indexing of the records prior to 1992.
- 4) BTS is granted until January 7, 2017, to build the plant.
- 5) At least 6 weeks prior to January 7, 2017, BTS should provide ITG with three dates during the work week for the ITG title plant inspection. The dates provided must allow ample time for the plant to be inspected and certified as complete.
- 6) Pursuant to 265 IAC 9.7(10), BTS’s title plant must be verified by the Board as complete and up-to-date prior to February 7, 2017. BTS 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, Title Guaranty Board Secretary

