

**BEFORE THE IOWA FINANCE AUTHORITY, IOWA TITLE GUARANTY BOARD**

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IN RE:	)	
APPLICATION FOR A TITLE PLANT AND	)	RULING GRANTING APPLICATION TO
TRACT INDEX WAIVER BY BRENDEN	)	WAIVE TRACT INDEX REQUIREMENT
HOAG.	)	

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**INTRODUCTION**

Brenden Hoag (hereinafter Hoag), an attorney licensed to practice law in Iowa, has filed an application (hereinafter Application) for a permanent 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 Iowa Title Guaranty (ITG) program. This type of waiver request is described in 265 IAC 9.7(8)"b" "Permanent waivers for attorneys".

Mr. Hoag is a participating attorney in good standing with ITG. Mr. Hoag practices through the firm of Dean Hoag, Jr., Attorney at Law, and their office is in West Des, Iowa. The Hoags' do their abstracting d/b/a Statewide Abstract and Title, as well as with a number of title plants through affiliated businesses.

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

**RECORD**

The record before the Board includes the following:

- Hoag's Application for Waiver.
- ITG Deputy Director Matt White, Esq.'s legal analysis of Application, law and facts.
- Other documents, including abstracting samples, submitted with the Application.
- Two letters of support for the grant of a Waiver.
- Ten letters in opposition to the grant of a Waiver.
- Recommendation letter from "mentor" Mr. Dean Hoag, Jr.

- Other comments received through oral testimony at the Board meeting.
  - Brenden Hoag, Applicant
  - Mr. Dean Hoag, Jr. (Mentor attorney)
  - Jim Nervig, of Brick Gentry Law Firm (comments at Blue waiver apply to Hoag)
  - Charles Hendricks, Hendricks Law Office
  - David Truitt, Title Plant Owner/Abstractor in Davis and Wapello Counties
- Recommendation from the ITG Director Geri Huser to grant the Waiver.
- Audio recording and Minutes from the August 6, 2014 Board meeting and hearing on Hoag's Application.
- Supplemental Report.

On August 6, 2014, the Board held a hearing on Hoag's Application. The following individuals appeared before the Board: Brenden Hoag, Dean Hoag, Jr., Jim Nervig (reserved comments at Blue waiver as applicable to Hoag), Charles Hendricks, and David Truitt. In addition, the Board adopts the Supplemental Report as part of the record on this Waiver application.

#### **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 Standards nor the Iowa State Bar Association Title Standards require an abstractor to be a participating member of ITG. A Waiver granted by the ITG 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 the attorney abstractor without the abstract being produced from the use of a 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. Pursuant to Iowa Code §16.91(5)(b) and 265 IAC 9.7(7) the Board may grant a Waiver when the Board finds both of the following:

1. The title plant requirement described in Iowa Code Supplement §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), 265 IAC 9.7(7), for attorney applicants with experience abstracting under the supervision and control of an exempt attorney-abstractor, pursuant to 265 IAC 9.7(8)"b"(4)(1) the Board may grant a Waiver when the applicant provides and the Board considers, at a minimum, the following:

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.
2. 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 Board regarding the applicant's ability to abstract.
3. Samples of abstracts prepared by the applicant.
4. The 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.

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 recommends the Board grant the Waiver application.

### ANALYSIS

**A. Hoag has satisfied the hardship requirements pursuant to Iowa Code §16.91(5)(b) and 265 IAC 9.7(7)"a".**

The Board concludes that Mr. Hoag 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.

In his Application and oral testimony, Mr. Hoag stated that his hardship was related to having a succession plan in place for the eventuality when his father Dean Hoag, Jr. is no longer abstracting for ITG. He stated that his abstracting entity has been doing business through Mr. Dean Hoag, Jr. and that they have a large client base that have demanded there be a succession plan in place. Mr. Hoag stated, and ITG staff has verified, that his father's abstracting has been done on a statewide basis, in all 89 counties where they do not already have title plants.

Related to financial hardship, Mr. Hoag provided testimony that to establish a title plant in even one county the cost was estimated to exceed \$500,000. Based on the Board's experience, ITG staff experience, past waiver requests, and testimony provided at the Board meeting, this number may have been excessive when applied to each county in Iowa 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 fact that Mr. Hoag's estimate is excessive does not mean that Mr. Hoag has failed to establish hardship.

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.

Thus, the Board estimates the cost to build a 40-year title plant in each of Iowa's 99 counties.

The Board concludes this constitutes a financial hardship to Mr. Hoag.

In addition to the financial hardship, the Board finds that the time required to establish and to maintain a title plant in all 99 counties, which would be necessary to abstract statewide, within two years constitutes a hardship.

For these reasons, the Board finds that Mr. Hoag has established that complying with the 40-year title plant requirement statewide constitutes a hardship under Iowa Code §16.91(5)(b) and 265 IAC 9.7(7).

**B. Hoag has established that the 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 Waiver of the 40-year title plant requirement to Mr. Hoag 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.

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.

The Board finds that many lenders, particularly national lenders, want one-stop abstracting with uniform pricing, quality, and service for their national and local clientele doing business in all Iowa counties. Some lenders would be forced to renegotiate for abstracting services on a county-by-county basis, something that has proven to be difficult by statewide lenders. If there are not enough ITG participating abstractors to provide one-stop shopping for

abstract services, then lenders may use abstractors that are not participants in the ITG program to provide abstracting services in all Iowa counties. If this happens, those lenders will 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.

Thus, granting Mr. Hoag's Waiver application is clearly in the public interest because it will maximize the use of title guaranties. Put simply, if the Board denies Mr. Hoag's waiver application, he can still provide abstract services to lenders who use title insurance instead of title guaranties. Additionally, a waiver would increase competition, making abstracting more cost effective, timely, and accurate.

In addition, granting Mr. Hoag's Waiver application is clearly in the public interest because he provides competent abstracting services. Mr. Hoag has demonstrated his competence in performing abstracting services.

The Board finds that Hoag 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, an ITG review of the abstracting samples provided with the Application, and the testimony provided at the meeting, including the testimony from his mentor, Dean Hoag, Jr. The Board also finds that it is in the public interest to have a succession plan in place.

Considering all of these factors, the Board finds that Brenden Hoag 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. Hoag 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 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 Board regarding the applicant's ability to abstract.
- Samples of abstracts prepared by the applicant.
- The 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 Mr. Hoag has met the requirements set forth 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 and gives considerable weight to the fact that Mr. Hoag has provided sufficient evidence that he has ample abstracting experience to be granted a permanent waiver. Mr. Hoag provided an employment history from the late 1990's to present when he was working in his father's abstracting enterprise and traveling to courthouses and recorders offices, abstracting, and assisting in all aspects of this system, resulting in the creation by him of many reports of title, and new abstracts or their continuations and that that he has physically been to

and abstracted in 14 Iowa Counties. The Board has given weight to his Application where he described his background and abstracting experience in Iowa as well as out-of-state. In this information Mr. Hoag presented a detailed explanation in his Application of the process he uses to abstract, where he looks in the offices, what he looks for, and how it progresses to typing, quality assurance, and ultimately his legal review. This abstracting was personally supervised by his father, Mr. Dean Hoag, Jr.

The Board further finds that the professional references attached to his Application are credibly vouching for his ability to competently abstract. Further, the Board gives the written recommendation of his supervising attorney, Dean Hoag, Jr., considerable weight when he stated to this Board in writing and through oral testimony in his opinion based on his daily observations through many years of supervision and guidance of Mr. Hoag, that he possesses the customer oriented work ethic, along with a high level of skill, honesty and ethics required to be an attorney abstractor and that he supported Mr. Hoag in his effort to attain a Waiver.

Sample abstracts were made available to the Board for review and this Board finds them to be of good quality, although acknowledging that one or two errors were pointed out at the Board meeting by a member of the public. Additionally, the Board does acknowledge that although there are other abstractors available to provide abstracting in Iowa, providing a process to replace attorney-abstractors in a family business with another attorney-abstractor 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 Iowa, as well as for lenders using a statewide business model.

There were oral and written comments taken at the Board meeting. Attorney Jim Nervig supplied a written letter opposing a grant of a waiver, and he also reserved his testimony

provided in the earlier Blue Advantage Title Systems, LLC waiver as applicable in opposition of Mr. Hoag's waiver. Likewise, Mr. David Truitt provided testimony before the Board. The Board has taken these comments into consideration.

Abstracting attorney Charles Hendricks also appeared before the Board. He supplied a written letter oral testimony regarding some of the Hoag abstracting samples claimed as not meeting standards. The timing of the Hendricks disclosure was very unfortunate, because it gave no time to address the issues, or have the Applicant provide explanation. There was a very limited opportunity to review the merits of his complaint. Based on his complaint, after the Board meeting ITG staff gave the 10 subject abstracts an additional review.

Based on that review, ITG staff state they missed a typo as well missing as a showing of the corporate authority, and the name of who signed a document in one entry. (Mr. White states that he was subsequently told by Mr. Hoag after the Board meeting adjourned that for that abstracting the customer did not want Hoag to show the information that Mr. Hendricks complained about because it was for a commercial transaction where copies of the instruments would have been attached and reviewed, as opposed to the abstract update.)

There was also a typo pointed out in a legal description. However, ITG Staff states that it is their opinion and this Board agrees that the typo is not a material reflection on lack of ability to abstract. Likewise, ITG Staff did not find that the lack of showing of a signer for an entity is the type of reflection of lack of abstracting skills that would cause them to change their analysis presented to the Director or to the Board at the meeting. These abstracts were circulated to abstractors and interested parties thirty days in advance of the Board meeting for their review (if they so choose to do one), and no one except Mr. Hendricks complained about the sufficiency or accuracy of the abstracting at or before the Board meeting.

The Board takes the accuracy of the abstracts upon which ITG relies upon very seriously. A part of this Written Ruling will contain a requirement wherein additional abstracting samples will need to be provided, and the Board expects them to be thoroughly reviewed. Additionally, if this Board discovers that abstracts used for ITG purposes, future samples or otherwise, 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.

Considering all of these factors, the Board finds that Mr. Hoag 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**

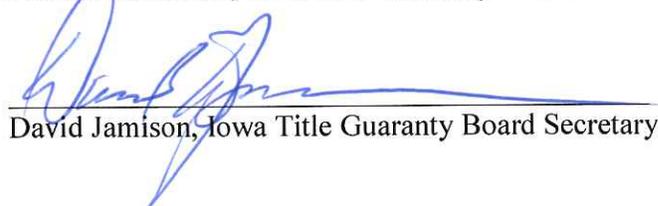
For the reasons set forth above, the Board grants Mr. Brenden Hoag's Application for Waiver of the 40-year title plant and tract index requirement, subject to the following limitations, restrictions or requirements:

- 1) Submit at least four root of title abstracts from different counties prepared and executed by Mr. Brenden Hoag to ITG staff within the next 6 months to be reviewed as determined by ITG based upon the abstracting minimum standard requirements and ILTA and ISBA title standards.
- 2) Attend at least two ITG conferences in the next 2 years.
- 3) Maintain active membership with the Iowa Real Estate Section List Serve for at least two years.

SO RULED this 7th day of October, 2014.



Patricia Schneider, Iowa Title Guaranty Board Chair



David Jamison, Iowa Title Guaranty Board Secretary

(seal)

