

BEFORE THE IOWA FINANCE AUTHORITY,
IOWA TITLE GUARANTY BOARD

IN RE:)	
APPLICATION FOR PROVISIONAL TITLE)	RULING GRANTING PROVISIONAL TITLE
PLANT AND TRACT INDEX WAIVER BY)	PLANT AND TRACT INDEX WAIVER
MEMBERS TITLE SERVICES, LLC)	
)	

INTRODUCTION

Members Title Services, LLC d/b/a Legal Abstract Company (“MTS”), applied for a provisional waiver of the 40-year title plant and tract index requirement pursuant to Iowa Code §16.91(5)(b) and 265 IAC 9.7(8)(a). The waiver allows the applicant to continue as a participating abstractor in the Iowa Title Guaranty (“ITG”) program in Muscatine County while they resolve issues within their title plant.

The Iowa Title Guaranty Board (“ITG 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:

- MTS’s Application for Waiver and supporting documentation.
- ITG Attorney Ann Marie Malave written legal analysis memo and presentation to the ITG Board
- Three letters in support of the Application for Waiver, including two from attorneys.
- Written Recommendation from the ITG Director Geri Huser to grant the waiver.
- Audio recording of the October 7, 2014 Board meeting and hearing of MTS’s Application for Waiver.

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 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.

ITG Staff has a process to review an Application prior to it being submitted to the ITG Board and the public. A legal analysis and determination related to whether the applicable

waiver factors have been met is then prepared and presented to the ITG Director. The ITG Director relies upon the legal analysis and staff determination and submits a recommendation to the Board. The ITG Director recommendation is based upon the legal analysis and staff findings, as well as, public comments. The information is presented to the ITG Board and the public at the ITG Board meeting. If present, the Applicant may make statements in support of the application. The floor is then opened for additional public comments or questions. The ITG Board may deliberate, ask additional questions of the Applicant or the ITG Director prior to making a decision to grant or deny the waiver. The ITG Board then votes to grant or deny the waiver based upon the entire record presented.

ANALYSIS

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

The Board concludes that MTS 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.

Member's Title Services LLC's d/b/a Legal Abstract Company ("MTS") is a unique position as it has been providing abstracts as an ITG Participant for 27 years (ITG Member Number 8127). Prior to the recent purchase of the facility by R. Craig Oppel (ITG Member Number 3730), an Iowa Land Title Association ("ILTA") Title Plant Inspection revealed that the facility failed the inspection due to several documents missing from a two-year period (1990-1992). Oppel submitted a provisional application to continue operating the MTS title plant while resolving the issues discovered as a result of the Title Plant Inspection. To resolve this issue

MTS staff must review every entry from January 1, 1990 through June 1, 1993. Oppel's efforts to rectify the issue included hiring a consultant and dedicating members of the MTS staff to this time consuming project. Oppel stated that given MTS's current staffing and volume of business coupled with the volume of records in Muscatine County it may take 6 months to a year to complete the title plant to meet ITG standards. Oppel also stated that if MTS is not granted a waiver to rectify the deficiencies in their facility, the loss of income would render it financially impractical to continue the business.

The ITG Board finds that MTS's application is unique as MTS is a current ITG participant that is not building a new title plant, but attempting to rectify deficiencies in their plant discovered by an ILTA Title Plant Inspection. The ITG Board further finds that if the waiver is not granted, a significant portion of MTS' revenue stream would be eliminated as they would no longer be able to participate in the ITG program. A further result would be a loss of MTS customers and a reduction in the number of available title plants in Muscatine County. MTS's situation demonstrates not just an immediate financial hardship for the company but long lasting effects that the company may be unable to recover from. The reduction in the income stream coupled with the time intensive process of reviewing every entry in the Muscatine County Land Records will not be cost effective for the company.

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

B. MTS 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 MTS 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 ITG Board notes that abstracting businesses are not licensed or regulated by any governmental entity, including ITG. Consequently, anyone can operate an abstracting business with or without a title plant. Neither the Iowa Land Title Abstracting Standards nor the Iowa State Bar Association Title Standards requires an abstractor to be an ITG participant to prepare abstracts. As an abstracting company does not have to participate in the ITG program, MTS can 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.

Oppel stated that many customers, including lenders, require an abstractor to provide ITG services. ITG staff is aware of this fact and is also aware that along border counties such as Muscatine County, title insurance is more prevalent due to its title insurance agents being in such close proximity to the state border. Eliminating MTS' ability to participate in the ITG program may lead to an increase in the use of title insurance. This in turn can reduce the integrity of the Iowa land title system as title insurers insure over multiple types of title issues instead of resolving them. This runs contrary to the express public purpose of maximizing the use of title guaranties.

Further, the ITG Board finds that not granting the waiver will result in the reduction of title plants in Muscatine County which reduces the availability of title guaranties by definition

(see 265 IAC 9.7(2)).

Another public interest concern is that by reducing the number of ITG participants overall can result in increases to the costs incurred by consumers utilizing ITG. It is a well-known economic principle that the reduction in needed services results in an increased price due to scarcity. Any increase to the cost of abstracts will make ITG less competitive than title insurance. Additionally, the ITG Board finds that allowing MTS to continue participating during their resolution efforts maintains competition in Muscatine County which promotes innovation and consumer choice.

Considering all of these factors, the ITG Board finds that MTS has established that a provisional waiver of the 40-year plant requirement is clearly in the public interest and is absolutely necessary to ensure the availability of title guaranties throughout the state thus satisfying the requirement found in Iowa Code §16.91(5)(b) and 265 IAC 9.7(7)"b".

C. MTS 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 ITG Board finds that MTS has provided substantial evidence that their title plant will be maintained in Muscatine County which meets the requirements shown in 265 IAC 9.7(8)"a"(1). MTS' has been an ITG participant for over 27 years and their title plant existed for

many years prior to 1987. MTS has already begun the process of resolving the deficiencies found in their title plant. The evidence supports the expectation that MTS will be able to remedy the deficiencies in their title plant.

The ITG Board finds that MTS has demonstrated that it will suffer a significant financial loss if MTS is no longer able to participate in the ITG program. MTS has been a participant since 1987 and its primary source of revenue is providing title guaranty services. Eliminating the portion of MTS's income from producing abstracts for ITG consumers would reduce if not completely eliminate the revenue stream from abstracting services while MTS resolve the issues cited by the ILTA Title Plant Inspection. This meets the requirements shown in 265 IAC 9.7(8)"a"(2) & (3).

Finally, pursuant to 265 IAC 9.7(8)"a"(4), the Board has considered the two professional references from licensed Iowa attorneys. These references speak to the quality and integrity of Mr. Oppel and their confidence in his ability to provide quality, reliable abstracting services through MTS.

Considering all of these factors, the Board finds that MTS 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 ITG Board grants a Provisional Title Plant and Tract Index Waiver for Muscatine County to Members Title Services, LLC d/b/a Legal Abstract Company subject to the following limitations, restrictions or requirements:

- 1) MTS shall provide ITG with monthly status reports in sufficient detail to allow for tracking the progress towards resolution of deficiencies in 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 R. Craig

- Oppel or other authorized representative of MTS.
- 2) MTS is granted until December 2, 2015, to resolve the deficiencies in the title plant.
 - 3) At least 6 weeks prior to December 2, 2015, MTS 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.
 - 4) Pursuant to 265 IAC 9.7(10), MTS's title plant must be verified by the Board as complete and up-to-date prior to January 2, 2016. MTS 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 2nd day of December 2014.



Patricia Schneider, Title Guaranty Board Chair



David Jamison, Title Guaranty Board Secretary

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