

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
CYCLONE TITLE LLC)	
)	

INTRODUCTION

Cyclone Title LLC (“Cyclone”) 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 become a participating abstractor in the Iowa Title Guaranty (“ITG”) program in Audubon County while they construct issues 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 ITG Board includes the following:

- Cyclone’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.
- Public Comment Letters
- Written Recommendation from the ITG Director Geri Huser to grant the waiver.
- Audio recording of the October 7, 2014 Board meeting and hearing of Cyclone’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 ITG 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 ITG 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 ITG Board may grant a provisional waiver when the ITG 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 ITG 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. Cyclone has satisfied the hardship requirements pursuant to Iowa Code §16.91(5)(b); 265 IAC 9.7(7)"a."

The ITG Board concludes that Cyclone 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.

Cyclone is owned and operated by Joseph Rasmussen, an ITG participating attorney and closer (ITG Member Number 10316). Rasmussen began construction of Cyclone's title plant in September 2013 and has already expended over \$15,000 into the endeavor. Cyclone has purchased the digital documents for Audubon County for the years 1978-Present and TitleScan Web Software (title indexing software). Despite efforts to complete the title plant prior to applying to become an ITG participating abstractor, Cyclone has run into financial difficulty and is unable to secure additional credit without an income stream. Cyclone provided documentation

from its lender to demonstrate this fact. Cyclone's financial situation impedes their ability to complete the title plant as they can only maintain part-time employees which increases the length of time it will take to complete the title plant.

Cyclone estimated that it will require an additional \$50,000 to \$60,000 thousand dollars to complete the title plant in one year. According to ITG Staff Cyclone has provided an accurate estimate of the cost to build a title plant in a small county such as Audubon County.

The ITG Board finds that Cyclone's situation demonstrates that the long term financial impact of not having a waiver is more than minimal as the lack of the waiver directly affects Cyclone's ability to secure additional funding and prolongs the time it will take to complete the title plant.

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

B. Cyclone 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 ITG Board concludes that granting a provisional waiver of the title plant requirement to Cyclone 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, Cyclone 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. ITG staff is aware that many customers, including lenders, require an abstractor to provide title guaranty services. ITG staff is also aware that within the western counties of Iowa the use of title insurance is prevalent.

Currently there is only one title plant in Audubon County. A second title plant in will assist in increasing ITG market share in the area which serves the public interest by decreasing the use of title insurance. The ITG Board finds that a second title plant in Audubon County increases the availability of title guaranties by definition (see 265 IAC 9.7(2)). The ITG Board also finds that a second title plant within the county increases consumer choice and may potentially lower consumer cost or at the very least, reduce the probability of increases in cost to the consumer. Lowering costs and making abstracts more cost-effective assists in making ITG more competitive with out-of-state title insurance.

Five public comments were received regarding Cyclone's application. Four of the comments praise the quality of work completed by Audubon County Abstract Company, which is currently the only title plant in Audubon County. They do not support or discourage the grant of a Provisional Waiver to Cyclone.

The single negative public comment authored by Shannon Nelsen of Audubon County Abstract Company did not suggest any detrimental effects of allowing a second title plant in Audubon County except the negative financial impact that it may have upon their already

existing title plant. The ITG Board understands the concern of Ms. Nelsen, however, it rejects the argument. Public interest is defined in the rules and includes increasing competition among abstractors. Increasing competition has positive effects that benefit the consumer, such as innovations in the end product, lower prices, and increased choice. The ITG Board will not engage in limiting competition in any county as it is detrimental to the public interest and does not increase ITG's market share.

Considering all of these factors, the ITG Board finds that Cyclone 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. Cyclone 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 ITG 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 Cyclone has provided substantial evidence that their title plant will be maintained in Audubon County which meets the requirements shown in 265 IAC 9.7(8)"a"(1). Cyclone began construction of its title plant in September 2013 and has purchased the digital documents of Audubon County for years 1978-Present and title indexing software. The evidence demonstrates that this title plant will be built in Audubon County.

The ITG Board finds that Cyclone has demonstrated that it will suffer a significant financial loss if Cyclone is unable to participate in the ITG program during the construction of their title plant. Cyclone has expended over \$15,000 since it initiated construction in 2013 and cannot secure additional credit without demonstrating an income from its services. Cyclone provided documentation from its lender stating this fact. This evidence meets the requirements shown in 265 IAC 9.7(8)"a"(2) & (3).

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

Considering all of these factors, the ITG Board finds that Cyclone 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 Audubon County to Cyclone Title LLC subject to the following limitations, restrictions or requirements:

- 1) Cyclone 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 Joseph Rasmussen or other authorized representative of Cyclone.
- 2) Cyclone is granted until December 2, 2015, to construct the title plant.
- 3) At least 6 weeks prior to December 2, 2015, Cyclone 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), Cyclone's title plant must be verified by the ITG Board as complete and up-to-date prior to January 2, 2016. Cyclone 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

(seal)



David Jamison, Title Guaranty Board Secretary

