

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
CRAWFORD COUNTY ABSTRACT LLC,)	
DBA SAC COUNTY TITLE)	

INTRODUCTION

Crawford County Abstract LLC dba Sac County Title (“CCA”) 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 Sac County while they construct the title plant for Sac County.

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:

- CCA’s Application for Waiver and supporting documentation.
- ITG Attorney Ann Marie Malave written legal analysis memo and presentation to the ITG Board
- One letter in support of the Application for Waiver.
- Public Comment Letters
- Written Recommendation from the ITG Director Geri Huser to grant the waiver.
- Audio recording of the December 2, 2014 Board meeting and hearing of CCA’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 to assist in the preparation of a Director's Recommendation. The information is presented to the ITG Board and the public at the ITG Board meeting and a determination to grant or deny the waiver is made by the ITG Board.

ANALYSIS

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

The ITG Board concludes that CCA 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.

Crawford County Abstract LLC was purchased by Ken Kahl (ITG Participant Number 8120) in November 2012. Prior to his purchase of CCA, Kahl was the manager of the facility since 2008. Kahl wishes to expand CCA facility to include a title plant for Sac County. Kahl has already begun the process of building a title plant and has filed the new company's name with the Iowa Secretary of State. The new title plant will be Crawford County Abstract LLC dba Sac County Title ("CCA").

CCA has already made a significant investment in the construction of the title plant for Sac County. CCA will be sharing the hardware and software resources of Crawford County

Abstract LLC. CCA has already purchased the digital documents of Sac County. CCA is confident that they can complete the title plant in one year for the estimated cost of \$59,000.00. The estimate includes the addition of the Sac County database to their existing system, additional staff cost and the amount already invested in purchasing the county documents. The current income from Crawford County Abstract LLC is not enough to cover the title plant expansion for Sac County. Without the waiver to generate income from Sac County abstract products, CCA will be unable to hire additional staff and current staff will be taken from income producing services for Crawford County Abstract to complete the Sac County title plant. The lack of additional staff will also hinder CCA's ability to complete the Sac County title plant in one year. The lack of a revenue stream during the construction of the title plant may require that CCA secure credit or engage in deficit spending which would have a negative effect on the finances of the company for years to come. Furthermore, without the waiver, the purchase of the Sac County digital documents would represent a significant loss to CCA if it had to abandon its plans for the Sac County title plant.

The ITG Board finds that CCA's situation demonstrates that the financial impact of not having a waiver is more than minimal as the lack of the waiver would directly affect CCA's ability to finance the construction of the title plant.

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

B. CCA 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 CCA 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, CCA 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.

Currently there is only one title plant abstractor in Sac County. The ITG Board finds that a second title plant in CCA County increases the availability of title guaranties by definition (see 265 IAC 9.7(2)). 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 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. The ITG Board also finds that having a title plant physically located in the county and/or staffed by professionals who are familiar with the local

customs is helpful in maintaining the integrity of the Iowa land title system.

Considering all of these factors, the ITG Board finds that CCA 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. CCA 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 CCA has provided substantial evidence that their title plant will be constructed and maintained for Sac County which meets the requirements shown in 265 IAC 9.7(8)"a"(1). CCA already made significant investment in the construction of its title plant for Sac County including purchasing the digital documents of Sac County for years 1992-Present and title indexing software which demonstrates that this title plant will be built for Sac County.

The ITG Board finds that CCA has demonstrated that it will suffer a significant financial loss if CCA is unable to participate in the ITG program during the construction of their title plant. CCA has utilized its own capital to begin construction of the Sac County title plant and the lack of income stream from abstracting services may require that CCA secure credit or engage in deficit spending to complete construction which would have a negative effect on the finances of

the company for years to come. 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), CCA has provided a professional reference from title plant abstractor Ted J. Huggins, President of Abstract Associates of Webster County (ITG Participant Number 8846). Over the past five years Huggins has communicated and consulted with CCA and has found Kahl to be a very efficient, knowledgeable and driven professional. It is Huggins opinion that CCA and Kahl can fulfill the ITG requirements and provide quality abstracts to serve his customers.

Considering all of these factors, the ITG Board finds that CCA 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 Crawford County Abstract, LLC dba Sac County Title subject to the following limitations, restrictions or requirements:

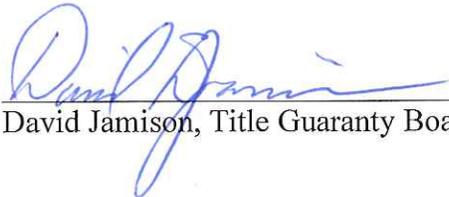
- 1) CCA shall provide ITG with monthly status reports in sufficient detail to track the progress towards completion of the title plant. ITG Staff will provide an update to the ITG Board at each quarterly ITG Board meeting including that a summary of the monthly reports and communications with Ken Kahl or other authorized representative of CCA. The ITG underwriting attorney assigned to you will schedule a one hour meeting to discuss the reporting process and recommendations.
- 2) Submit at least three root of title abstracts and three Form 900 abstracts created by CCA to ITG staff within the next 6 months to be reviewed by ITG based upon the abstracting minimum standard requirements and ILTA and ISBA title standards.
- 3) CCA shall provide within 6 weeks of December 2, 2014 verification of software purchase, company and activation date. This information will be provided to the ITG underwriting attorney assigned to you and discussed at your initial one hour meeting.

- 4) CCA is granted until December 1, 2016 to build the title plant. At least 6 weeks prior to completion CCA should provide ITG with 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 prior to the December 1, 2016 deadline.
- 5) Pursuant to 265 IAC 9.7(10), CCA's title plant must be verified by the ITG Board as complete and up-to-date.
- 6) CCA 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.
- 7) Within three (3) years applicant or at least one staff person will have earned or be in the process of earning the Certified Land Title Professional (CLTP) designation.

SO RULED this 10th day of March 2015.



Pat Schneider, Iowa Title Guaranty Board Chair



David Jamison, Title Guaranty Board Secretary

(seal)

