BEFORE THE IOWA FINANCE AUTHORITY,
IOWA TITLE GUARANTY BOARD

IN RE: APPLICATION FOR PROVISIONAL TITLE PLANT AND TRACT INDEX WAIVER BY ABSTRACT ASSOCIATES OF IOWA, INC. DBA ABSTRACT ASSOCIATES OF CALHOUN COUNTY	)))))))	RULING GRANTING PROVISIONAL TITLE PLANT AND TRACT INDEX WAIVER

INTRODUCTION

Abstract Associates of Iowa, Inc. dba Abstract Associates of Calhoun County ("AAI") 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 Calhoun 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:

- AAI's Application for Waiver and supporting documentation.
- ITG Attorney Ann Marie Malave written legal analysis memo and presentation to the ITG Board
- Two letters in support of the Application for Waiver, from two Iowa attorneys.
- 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 AAI'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. AAI has satisfied the hardship requirements pursuant to Iowa Code §16.91(5)(b); 265 IAC 9.7(7)"a."

The ITG Board concludes that AAI 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.*

Abstract Associates of Iowa, Inc. was created in in March 2012. AAI's President is Ted J. Huggins. According to the Iowa Secretary of State website, AAI has 7 fictitious names or DBAs, including Abstract Associates of Calhoun County. Huggins is also the President of Abstract Associates of Webster County, Inc., which has been an ITG Participant since 2009 (ITG Member Number 8846).

AAI has already made a significant investment in the construction of the title plant for Calhoun County. The hardware, software and digital documents for the facility have been purchased and AAI staff has begun indexing those documents. AAI is confident that they can

complete the title plant in one year for the estimated cost of $81,000.00. However, based on Huggins prior experience building a title plant in Webster County, Huggins stated that he is unable to finance the remaining construction of the title plant in Calhoun County without an income from abstracting services as ITG Participant in Calhoun County. Additionally, AAI is constructing a second title plant concurrently in Wright County, which limits the resources (time, staffing & money) available to commit to the Calhoun County title plant. AAI is utilizing its own funds to finance the construction of both titles plants and the lack of revenue from ITG products and services would hinder their ability to complete construction of the title plants within one year timeframe. The lack of a revenue stream during the construction of the title plant may require that AAI secure credit or engage in deficit spending which would have a negative effect on the finances of the company for years to come.

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

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

B. AAI 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 AAI 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, AAI 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 are two title plant abstractors in Calhoun County. A third 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 third title plant in Calhoun County increases the availability of title guaranties by definition (see 265 IAC 9.7(2)). The ITG Board also finds that a third 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.

The negative public comment authored by Mark Harmening of Security Title & Investment Company states his belief that there are enough title plants and statewide attorneys to

provide abstracts for ITG in Calhoun County and there is no room for another provider. The ITG Board understands Harmening's concern 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 as it is detrimental to the public interest.

Considering all of these factors, the ITG Board finds that AAI 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. AAI 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 AAI has provided substantial evidence that their title plant will be constructed and maintained for Calhoun County which meets the requirements shown in 265 IAC 9.7(8)"a"(1). AAI already made significant investment in the construction of its title plant including purchasing the digital documents of Calhoun County for years 1989-Present and title indexing software. The evidence demonstrates that this title plant will be built for Calhoun

County.

The ITG Board finds that AAI has demonstrated that it will suffer a significant financial loss if AAI is unable to participate in the ITG program during the construction of their title plant. AAI has utilized its own capital to begin construction of the title plant and the lack of income stream from abstracting services may require that AAI 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), the ITG Board has considered the two professional references from licensed Iowa attorneys. These references speak to the quality, integrity and timeliness of AAI's abstracts in Webster County, and their confidence in AAI's ability to provide the same excellent abstracting services for Calhoun County.

Considering all of these factors, the ITG Board finds that AAI 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 Calhoun County to Abstract Associates of Iowa, Inc. dba Abstract Associates of Calhoun County subject to the following limitations, restrictions or requirements:

1) AAI 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 an authorized representative of AAI. 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 AAI 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) AAI 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) AAI is granted until December 1, 2016 to build the title plant. At least 6 weeks prior to completion AAI 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), AAI's title plant must be verified by the ITG Board as complete and up-to-date.

6) AAI 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)

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