

BEFORE THE IOWA FINANCE AUTHORITY, IOWA TITLE GUARANTY BOARD

IN RE:)
)
APPLICATION FOR A TITLE PLANT AND) RULING GRANTING APPLICATION TO
TRACT INDEX WAIVER BY TODD) WAIVE TRACT INDEX REQUIREMENT
PRICHARD)

INTRODUCTION

Todd Prichard (“Prichard”), an attorney licensed to practice law in Iowa, has filed an application for a permanent waiver (“Application”) 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”.

Prichard is a Title Guaranty participating attorney in good standing with ITG. Prichard practices through the firm of Prichard Law Office, PC located in Charles City, Iowa. Prichard is also a 50% owner of Great Plains Title LLC d/b/a/ Council Bluffs Title and Escrow, a title plant in Pottawattamie County.

The Iowa Title Guaranty Board (“ITG 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:

- Prichard’s Application for Waiver.
- ITG attorney Ann Marie Malave’s written legal analysis memo and presentation to the ITG Board
- Other documents, including abstracting samples, submitted with the Application.
- Two letters of support for the grant of a waiver.
- Public Comment Letters

- Recommendation from the former ITG Director Geri Huser to grant the Waiver.
- Audio recording and Minutes from the December 2, 2014 ITG Board meeting and hearing postponing review of Prichard's Application.
- Audio recording and Minutes from the March 24, 2015 ITG Board meeting and hearing on Prichard's Application.

On December 2, 2014, the ITG Board was to hold a hearing on Prichard's Application.

That hearing was postponed until a later date. On March 24, 2014, the ITG Board held a special meeting to hear the waiver Applications of Prichard and another attorney. The following individuals appeared before the ITG Board: Todd Prichard, Joe Feller, and Dwight Dinkla.

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 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 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.

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 ITG Board. The ITG Director's 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. Prichard has established the hardship requirements pursuant to Iowa Code §16.91(5)(b) and 265 IAC 9.7(7)"a"

The ITG Board concludes that Prichard 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.

Prichard is an ITG participating attorney, closer and field issuer (ITG Member Number 3803). He is also a 50% owner of Great Plains Title LLC d/b/a/ Council Bluffs Title and Escrow which is a title plant in Pottawattamie County. Prichard seeks to voluntarily limit his waiver to six western Iowa counties: Pottawattamie, Harrison, Cass, Mills, Shelby and Page.

Prichard provided evidence of 2 years of consecutive losses in operating his title plant in Pottawattamie County and his inability to secure additional funding from lenders to construct more title plants to demonstrate financial hardship. With the exception of Pottawattamie County, all the counties in which Prichard is seeking waiver are small counties. Prichard sought funding from a lender estimating the cost of a title plant to be \$50,000.00 per plant for each of the small counties. Prichard provided documentation from his lender which cited his title plant's insufficient cash flow and lack of collateral as reasons for denying funding for the construction of additional title plant(s).

The ITG Board finds Prichard has demonstrated financial hardship by disclosing the lack of profitability of his own title plant and providing documentation that evidences the difficulty in securing funds for expansion of his business. By definition, financial hardship alone is enough to

meet the hardship requirement under the statute. For these reasons, the ITG Board concludes that Prichard has established a hardship under Iowa Code §16.91(5)(b) and 265 IAC 9.7(7).

B. Prichard 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 Prichard 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 ITG Board notes that abstracting businesses are not licensed or regulated by any governmental entity, including Iowa Title Guaranty. Put in other terms, an abstractor need not be a participating abstractor in the Title Guaranty program to prepare abstracts in Iowa. 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 a participating member of ITG to prepare abstracts. As an abstractor does not have to participate in the ITG program, Prichard 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. Prichard’s application is limited to 6 of the western counties of Iowa: Pottawattamie, Harrison,

Cass; Mills, Shelby, and Page. The ITG Board finds that in each of these counties there is only one ITG Participating Abstractor. The ITG Board also notes that while there are 12 statewide attorneys that can abstract in those counties, actual participation by the statewide attorneys is limited to 8. The ITG Board finds that granting Prichard's waiver Application is clearly in the public interest because it increases competition among abstractors in each county, making abstracting more cost effective, timely, and accurate. The ITG Board further finds that granting the waiver may also increase the use of title guaranties in the western counties where title insurance is so prevalent. Additionally, if the ITG Board denies Prichard's waiver Application, he can still provide abstract services to lenders who use title insurance instead of title guaranties which would be adverse to Title Guaranty and the people of Iowa.

In addition, granting Prichard's waiver Application is clearly in the public interest because he provides competent abstracting services. The ITG Board finds that Prichard 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, the sample abstracts and the testimony provided at the meeting,

Considering all of these factors, the ITG Board finds that Todd Prichard 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. Prichard has 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 ITG Board finds that Prichard 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 ITG Board finds and gives considerable weight to the fact that Prichard has provided sufficient evidence that he has sufficient abstracting experience to be granted a permanent waiver. Mr. Prichard has been abstracting under the supervision of a mentor, Charles W. Hendricks (ITG #3629), who has been a statewide participant for ITG since 2008. Prichard entered into a mentoring agreement with Hendricks in January of 2011. Hendricks provided practical abstractor training to Prichard which included teaching him to complete general title searches, title reports and abstracts.

The Board further finds that the professional references from two Iowa attorneys attached to his Application are credibly vouching for his ability to competently abstract.

Sample abstracts were made available to the Board for review and this Board finds them to be of sufficient quality.

The ITG Board notes that in the counties of Harrison, Cass, Mills, Shelby and Page there is one ITG Participating Abstractor with a title plant in each county. In Pottawattamie County, Prichard is a co-owner of one of the two title plants in that county. The ITG Board is cognizant

of the public harm that might occur if no abstracting-attorneys were available to meet the needs of the public in the western counties, its surrounding markets, as well as for lenders using a statewide business model.

Considering all of these factors, the Board finds that Mr. Prichard 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 Todd Prichard'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 prepared and executed by Mr. Prichard to ITG staff within the next 6 months from four different counties 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 or real estate CLE's per year for 5 years. Maintain active membership with the Iowa Real Estate Section List Serve during your participation with ITG.
- 3) Attend a one hour meeting with the ITG underwriting attorney assigned to your application and review all requirements of the contract for statewide abstracting.
- 4) Agree to audits of your abstracting product and compliance with all ITG regulations.
- 5) Execute an ITG participation agreement/contract prior to issuance or use of your ITG participation number.
- 6) Provide proof of abstracting insurance coverage including but not limited to the entire policy and any exception or exclusions prior to your use of your ITG participation number. Use of the number is limited to the following counties: Pottawattamie, Harrison; Cass; Mills; Shelby; and Page.

- 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 2nd day of June, 2015.



Patricia Schneider, Iowa Title Guaranty Board Chair



David D. Jamison, Iowa Title Guaranty Board Secretary

(seal)

