

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 PAUL MILLER) WAIVE TRACT INDEX REQUIREMENT

INTRODUCTION

Paul Miller (“Miller”), 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”.

Miller is a Title Guaranty participating attorney in good standing with ITG. Miller practices through the firm of Miller Law Office located in Fairfield, Jefferson County, Iowa.

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:

- Miller’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.
- Four 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 Miller’s Application.

- Audio recording and Minutes from the March 24, 2015 ITG Board meeting and hearing on Miller's Application.

On December 2, 2014, the ITG Board was to hold a hearing on Miller'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 Miller and another attorney. The following individuals appeared before the ITG Board at the March 24, 2015 meeting: Paul Miller, Joe Feller, and Bill Price.

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. Miller 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 Miller 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.

Miller is an ITG participating attorney, closer and field issuer (ITG Member Number #10056). He has been a participant since 2007. Miller seeks to voluntarily limit his waiver to six southeastern Iowa counties: Jefferson, Henry, Keokuk, Van Buren and Wapello.

Miller did not provide any estimated costs associated with creating a title plant such as software, building space, employee costs, training, insurance, etc. He did point to an earlier purchase of a server (hardware) for the firm which cost in excess of \$10,000. Despite the lack of estimated costs in Miller's Application, ITG staff and the ITG Board are aware of the estimated costs of creating a title plant in small counties (\$40,000-\$75,000). Miller has also pointed out that due to his large monthly student loan payment he is unable to personally invest in the construction of a title plant. He also notes that the firm is a two-attorney rural practice and the required dedication of their limited resources (staff, time and money) to constructing a title may negatively affect other aspects of their practice.

Miller is a rural attorney with a general practice firm physically located in Jefferson County. The counties that Miller is limiting himself to are rural counties with limited growth potential. Maintaining a rural practice is a difficult prospect as clients expect that the attorney be

able to handle multiple areas of law and the attorney is limited on pricing given the lower cost of living in rural counties. Miller has stated that his practice's income is primarily probate with a portion of income derived from real estate matters. In rural markets, a reduction in any portion of the business has a larger impact on a small rural firm than on the same small firm in a larger, urban market. Additionally, it does not make financial sense to invest such a large amount of funds and resources into constructing a title plant for a small portion of the overall practice. Not approving the waiver will limit Miller's ability to serve his clients on certain real estate matters and consequently the potential loss of income and clients would have an adverse impact on Miller's overall practice. Accordingly, Miller has met the hardship requirement of the statute.

The ITG Board notes that by definition, financial hardship alone is enough to meet the hardship requirement under the statute. The ITG Board finds Miller has demonstrated financial hardship by demonstrating his inability to personally invest due to his law student debt obligations, and the nature of his rural practice. Additionally, denying the waiver would adversely affect the ability of the Miller Law Office to continue servicing its current clients on certain real estate matters. For the foregoing reasons, the ITG Board concludes that Miller has established a hardship under Iowa Code §16.91(5)(b) and 265 IAC 9.7(7).

B. Miller 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 Miller 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 Iowa 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, Miller 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. Additionally, the counties Miller wants to serve are very close to the eastern and southern borders of Iowa. ITG staff is aware of the fact that counties near the border are more likely to have title insurance as it is legal in neighboring states. It is also legal in Iowa under certain circumstances. Granting the waiver could increase the use of ITG in these counties, increasing market share.

ITG staff is aware that many customers, including lenders, require an abstractor to provide title guaranty services. The ITG Board finds that in each of these counties there is only one ITG Participating Abstractor. The number of statewide attorneys physically located in the counties is minimal: Henry – 5; Jefferson – 4; Keokuk – 0; Van Buren – 0; Wapello -0. The number of statewide attorneys actually abstracting and issuing ITG Certificates for these counties are: Henry – 20; Jefferson – 18; Keokuk – 14; Van Buren – 16; and Wapello – 17. Additionally, recent changes in federal law (Dodd-Frank and new CFPB regulations) have prompted national lenders to seek out businesses that can provide services on a statewide basis. This provides the

lenders with a “one-stop shop” for all title and closing services. ITG has been reviewing this issue and discussing this matter with various title industry organizations. As this business model becomes more prevalent, it is beneficial to ITG to have local attorneys who can provide all services to a local bank in smaller counties. The ITG Board finds that granting Miller’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. Additionally, if the ITG Board denies Miller’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.

The succession plan for the Miller Law Firm allows for the continuation of having ITG certificates and services available in southeast Iowa at the current level and may even increase ITG’s market share in the area. As this small number of participating abstractors dwindles due to retirements, the rural communities are left with fewer local options at a competitive price. If the current title plant abstractors were to remove themselves from the market (i.e., retire) then the residents of these counties would be limited in choice as there are only a handful of statewide attorneys in the area. The ITG Board finds that granting this waiver is clearly in the public interest as it provides rural counties with another local statewide attorney option and may provide a lower cost option to consumers.

Miller also brings to light an issue regarding rural practice in Iowa. In rural areas there are fewer attorneys available to the public and for the rural practice attorney maintaining a successful practice is more difficult given the limited income and potentially high debts of recent law school graduates. Approximately 25% of Miller’s income is derived from his real estate practice. Denying the waiver may reduce the amount of real estate work for the firm. In rural

markets, a reduction in any portion of the business has a larger impact on a small firm than on the same small firm in a larger, urban market. A denial of the waiver with the impending retirement of David Miller, may ultimately result in the closing of the firm. According to the Iowa State Bar Association's website (accessed 11/30/2014) the five counties have a limited number of attorneys physically located in the actual county [Jefferson 7; Henry 14; Keokuk 4; Wapello 9; Van Buren 4]. The lack of rural attorneys in the state of Iowa is a real concern that has been raised in Iowa newspapers, before the Iowa State Bar Association and the Iowa Supreme Court (Rural areas face declining lawyer numbers; Grant Rodgers, The Des Moines Register; November 2, 2014). The ITG Board concludes that given the overall public interest concern regarding the lack of rural attorneys, denying the waiver is not in the public interest.

In addition, granting Miller's waiver Application is clearly in the public interest because he provides competent abstracting services. The ITG Board finds that Miller 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 Paul Miller 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. Miller 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 Miller 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 Miller has provided sufficient evidence that he has sufficient abstracting experience to be granted a permanent waiver. Mr. Miller has been abstracting under the supervision of a mentor, David P. Miller (ITG #2098) who is a grandfathered attorney and has been an ITG Participant since 1987. David P. Miller has been mentoring Paul Miller for 9 years in the areas of abstracting and title research.

The Board further finds that the additional professional references from three Iowa banking professionals 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 requested by Miller there is one ITG Participating Abstractor with a title plant in each county with the exception of Henry County which has two title plants. The number of statewide attorneys physically located in these counties varies (Henry – 5; Jefferson – 4; Keokuk – 0; Van Buren – 0; Wapello -0). 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 these counties, its surrounding markets, as well as for lenders using a statewide business model.

Considering all of these factors, the Board finds that Mr. Miller 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 Paul Miller'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. Paul Miller 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) 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 participation number 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) Agree to attend at least two ITG conferences or real estate CLE's per year for 5 years.
- 6) Execute an ITG participation agreement/contract prior to issuance or use of your ITG participation number.
- 7) 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: Jefferson, Henry, Keokuk, Van Buren and Wapello.

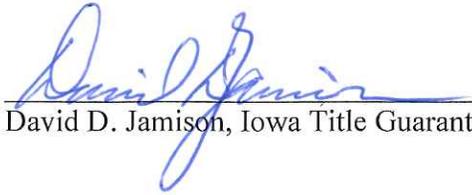
- 8) Within three (3) years applicant or at least one staff person will have earned or be in the process of earning the Certified Land Title Professional (CLTP) designation.

SO RULED this 2nd day of June, 2015.



Patricia Schneider, Iowa Title Guaranty Board Chair

(seal)



David D. Jamison, Iowa Title Guaranty Board Secretary

