

BEFORE THE IOWA FINANCE AUTHORITY, IOWA TITLE GUARANTY BOARD

IN RE:)	
)	
APPLICATION FOR A TITLE PLANT AND)	RULING DENYING APPLICATION
TRACT INDEX WAIVER BY IOWA TITLE)	TO WAIVE TRACT INDEX
COMPANY)	REQUIREMENT

INTRODUCTION

Iowa Title Company, an Iowa corporation that has been providing full service abstract and title services in several Iowa counties, filed an application on October 15, 2014 for a permanent waiver of the 40-year title plant and tract index requirement pursuant to Iowa Code §16.91(5)(b). This type of waiver request is described in 265 Iowa Administrative Code 9.7(8)"c" as a "[p]ermanent waiver for non-attorneys".

Iowa Title Company has been a participating abstractor since the inception of Iowa Title Guaranty and is currently in good standing with Iowa Title Guaranty. Iowa Title Company has title plants in Polk, Dallas, Warren, Scott and Linn counties.

The Iowa Title Guaranty Board (the "Board") having reviewed the record and hearing testimony on this matter, hereby denies Iowa Title Company's title plant waiver application.

RECORD

The record before the Board includes the following:

- Iowa Title Company's Application for Waiver
- Iowa Title Guaranty attorney Ann Marie Malave's written legal analysis memo and presentation to the Board
- Six letters in support of the granting of a waiver
- Forty-eight letters in opposition to the granting of a waiver
- Transcript of June 2, 2015 Board meeting
- Recommendation from Interim Iowa Title Guaranty Director Tara Lawrence to deny the waiver or in the alternative grant the waiver with restrictions

On October 2, 2015, the Board held a hearing on Iowa Title Company's application. The following individuals appeared before the Board: Randee Slings of Iowa Title Company; Mike McLain, President of the Iowa Land Title Association; and Frank Feilmeyer, Chair of the Real Estate Section of the Iowa State Bar Association.

APPLICABLE LAW

Abstracting is not regulated in Iowa 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 Iowa Title Guaranty in order to perform abstracting services. A waiver granted by the Board allows an attorney or abstractor to prepare abstracts for Iowa Title Guaranty purposes without the use of a title plant.

The 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. Pursuant to Iowa Code §16.91(5)(b) and 265 Iowa Administrative Code 9.7(7), the Board may grant a waiver when the Board finds both of the following:

1. The title plant requirement 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 Iowa Administrative Code 9.7(7), for non-attorney applicants, the applicant must also provide, at a minimum, the following information:

1. The applicant's abstract experience, maintenance of a title plant by the applicant in any other county, and degree of participation by the applicant in the title guaranty division standards in excellence program;

2. Professional references;
3. Samples of abstracts prepared by the applicant;
4. The applicant's business plan;
5. Evidence of clients and volume of additional transactions that will be brought into the title guaranty abstract/attorney system as a result of the waiver;
6. The number, availability, service and quality of other abstractors available to perform abstracting and whether the grant of a permanent waiver will adversely impact the business of other participating abstractors.

See 265 Iowa Administrative Code 9.7(8)"c".

Iowa Title Guaranty has a process to review a waiver application prior to submitting it to the Board. A legal analysis and determination related of whether the applicable requirements have been met is prepared by Iowa Title Guaranty and presented to the Iowa Title Guaranty Director. The Iowa Title Guaranty Director utilizes the legal analysis, staff findings, public comments and his or her legal opinion to submit a recommendation to the Board. The information is presented to the Board at the Board meeting. If present, the applicant may make statements in support of the application. Public comments are then received by the Board. The Board may deliberate and ask additional questions of the applicant or the Iowa Title Guaranty Director prior to granting or denying the waiver. The Board then votes to grant or deny the waiver based upon the entire record presented.

ANALYSIS

Iowa Title Company's application for a permanent waiver presents an issue of first impression. The issue is whether a legal entity may apply for a permanent waiver of the title plant requirement. Under 265 Iowa Administrative Rule 9.7(8)"c", there does not appear to be an exclusion or prohibition of a corporation or legal entity applying as a "non-attorney." In addition, the rules applying to non-attorneys do not include any requirement for personal liability, which is distinguished from 265 Iowa Administrative Rule 9.7(8)"b" which requires acceptance of personal liability by attorneys. After a review of the history of the changes made to the rules, the

revisions made to 265 Iowa Administrative Rule 9.6(4) (effective February 17, 2010) appear to be an attempt to apply personal liability to all waiver applicants. These provisions in the rules are conflicting and, as anticipated by Iowa Title Guaranty staff, difficult to reconcile.

After the presentation by Iowa Title Guaranty staff the Board discussed the application at length and was unable to reconcile this conflict during the board meeting. The Board cited to the rule discrepancy as the basis for denying Iowa Title Company's application in its entirety. The Board is aware that Iowa Title Guaranty staff are currently in the process of amending the administrative rules to resolve this conflict and other ambiguities within the rules.

RULING

For the reasons set forth above, the Board hereby denies Iowa Title Company's Application for Waiver of the 40-year title plant and tract index requirement.

SO RULED this 2nd day of October, 2015



Pat Schneider, Iowa Title Guaranty Board Chair



Tara Lawrence, Iowa Title Guaranty Board Secretary

