

BORDWELL LAW OFFICE, P.L.C.

RICHARD S. BORDWELL

TREVANIEL J. TEMPLE
MEGAN FLUHARTY
ATTORNEYS

206 WEST MAIN STREET

P.O. BOX 308
WASHINGTON, IA 52353-0308
VOICE 319/653-2177; FAX 319/653-4797

KEOTA OFFICE:

207 EAST BROADWAY
KEOTA, IA 52248
VOICE 641/636-2165
FAX 641/636-2168

September 17, 2015

Tara Lawrence, Director, Title Guaranty
tara.lawrence@iowa.gov
2015 Grand Avenue
Des Moines, IA 50312

Dear Director Lawrence:

I offer the following comments and objections to the proposed complete rewrite of Iowa Finance Authority Chapter 265 of the Iowa Administrative Code which will be addressed at our September 22, 2015, meeting.

1. **DEFINITION OF ABSTRACT.** Your change of the definition of "abstract" departs from the traditional definition of abstract found in your present Rule 9.1(16). Abstracts have long been prepared according to the Title Standards developed by the Iowa State Bar Association and the Abstract Standards developed by the Iowa Land Title Association. Your proposed rule is defective in that it does not define "Minimum Abstract Standards." The Minimum Abstract Standards should be included as part of your proposed rules.

MINIMUM ABSTRACT STANDARDS. I was unable to find Minimum Abstract Standards on your web site but did find they were distributed to the Title Guaranty Board in the June 4, 2014, board packet as Resolution 14-04, as shown by the official minutes of that meeting. Resolution 14-04 is not available on your web site! It should be available. The minutes show Resolution 14-04 was passed, with an amendment proposed by Title Guaranty Director Huser, which allows EXCLUSIONS from the Minimum Standards all "Matters addressed by written county bar standards as passed by the county bar associations."

COUNTY BAR TITLE STANDARDS. Director Huser stated in that June 4 meeting, "it would be Iowa Title Guaranty's responsibility to track the local standards from each county." There was a strong movement in the 1990s by the Title Standards committee of the Iowa Bar Association, led by LeRoy Redfern and George Madsen, away from local title standards toward state-wide standards. This proposal is a move backward.

WHERE ARE COUNTY TITLE STANDARDS? Is Title Guaranty tracking and making available county bar title standards provided for in the Minimum Abstract Standards which have been approved since June 4, 2014? I can't find them. How can I access the local rules for Henry or any other county? You can find a Henry County Bar Association resolution on approving platted subdivisions filed with the county recorder on December 21, 1978 in

Record book 377 Page 347. You should rethink promoting local standards and instead focus on promoting uniform state-wide standards.

ROOT OF TITLE ABSTRACTS. A document entitled "Iowa Title Guaranty Abstract Minimum Standards" obtained from Iowa Land title Association (with a notation on the bottom "2009 EDITION - 6/26/14") contains Minimum Standard 4 as follows:

4. For "new" root of title abstracts, a record chain of title dating back at least 40 years. (pursuant to Marketable Record Title Act "MRTA")
All matters of record prior to the search period may be omitted except for:
 - i. Plats and surveys;
 - ii. Grants of easement;
 - iii. Unexpired Leases;
 - iv. Boundary line agreements

ORIGINAL ENTRY TO ROOT OF TITLE GAP. Do Title Guaranty proposed rules require an abstractor to search the county records from original entry or search a title plant from original entry when preparing a new abstract? They should. Your rules should, in addition to requiring the search, provide for retaining documentation of the search so that you will be able to check for compliance. You should have rules to provide a mechanism to check for compliance. Will any penalty be applied if an abstractor fails to search the records? Does the Minimum Standard require the abstractor to include the four types of documents prior to "root of title" only if they happen to be aware of them (without looking for them)?

ABSTRACT MINIMUM STANDARDS vs. TITLE STANDARDS AND ABSTRACT STANDARDS. Will the abstract minimum standards replace the Iowa Title Standards and the Abstract Standards of the "blue book" for abstracts produced in Iowa? Yes, of course they will, just like minimum standards in education have become the "new" standard.

2. **MISSION STATEMENT SHOULD INCLUDE PROPERTY BUYERS.** Your mission statement fails to mention any concern about protecting buyers in real estate transactions. This is a serious shortcoming. Or is it intentional?

3. **COMPLIANCE IS WEAK UNDER NEW RULES.** Your rules on compliance, 9.6 (12), are woefully inadequate. Under prior rule 9.7(10) "inspection of the title plant shall be performed by division staff..." implying a requirement to inspect. The word "shall" is changed to "may" which is normally considered permissive and therefore a title plant is not required to be inspected.

ALL ABSTRACTORS (INCLUDING ATTORNEYS) SHOULD BE REQUIRED TO DOCUMENT THEIR ABSTRACTING PROCESS. The new rules recognize the need to review procedures in issuing policies and conducting closing but are silent on the process of

making an abstract. The division may audit a participant, but what standard is to be used? I find no audit procedures. No standards. How will complaints be handled? What information will be made available to the public? Your proposal states that you may "test of title plants and tract indices," but rules are silent about reviewing the procedures involved in using a plant and say nothing about the procedures used by staff searching plants or documenting how searches are done by those abstractors who abstract without a plant.

WHAT HAS TITLE GUARANTY BEEN DOING ON COMPLIANCE? How does Title Guaranty handle multiple complaints on the same company for preparing abstracts which omit plats of subdivisions of the property under examination? What about omitting a quiet title action that occurred within the last 40 years? I have had a number of "40 year" marketable title abstracts where easements were omitted, in one case an easement benefiting the property over adjacent property and in another case, a sewer easement which was simply omitted. I have submitted complaints to Iowa Title Guaranty but I have never received a reply even though I have submitted copies of the abstracts. There are abstractors out there cutting corners in big ways and unless you implement a reasonable system of compliance checks this will continue and your claims will continue to increase.

4. **TITLE GUARANTY IS NOT REGULATING ATTORNEYS.** Your rules may appear to give Title Guaranty authority to regulate attorneys but it is not happening. About a year ago I submitted a complaint to Iowa Title Guaranty that an abstractor who was requesting a plant waiver should be denied the waiver because he blatantly plagiarized a copyrighted abstract produced by a title company. I was told by a Title Guaranty official in the higher ranks that the board had no jurisdiction to police attorneys who were preparing abstracts because that is the practice of law and it was regulated only by the Supreme Court. I suggest that you should take the responsibility of supervising abstracting attorneys right along with non-attorney abstractors. Treating these two classes of abstractors differently smacks of lack of equal protection.

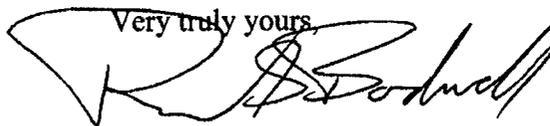
5. **CAN ATTORNEY ABSTRACTORS LEND THEIR SIGNATURES TO OTHERS?** You have no proposed standards for supervision required by grandfathered or exempted attorney when others prepare the abstracts. It is widely understood that some attorney abstractors simply provide a rubber stamp to abstractors in other locations preparing abstracts under their name. Title Guaranty should define the level of supervision which should apply.

6. **TITLE OPINION STANDARDS.** Your Rule 9.7(2)(a) states that title opinions shall be prepared by participating attorneys and issued in accordance with the division procedures as specified in manuals and in other written or oral instruction given by the division. Giving oral instructions is a bad idea and should be stricken from your proposed rule.

ORAL STANDARDS FOR TITLE OPINIONS IS A BAD IDEA. Years ago Title Guaranty has issued guidelines for non-purchase transactions using Forms 900/901. They have not followed these rules and have given inconsistent oral guidance. For example, Forms 900/901

are not to be used where there is a change in legal description but changes in legal descriptions are routinely allowed. Perhaps the reason is that the guidelines are poorly drafted and do not allow, for example, the change of legal description by dropping one of two lots which have been conveyed together. Another example of how current guidelines are not followed is that the non-purchase transactions are not to be used for a change in ownership. I have been told by Title Guaranty staff that they will allow deletion of a spouse in a divorce and the addition of a new spouse using the Form 900/901 system. Again, if the division intends to make specific exceptions, those should be outlined in your administrative rules.

GUIDANCE TO ABSTRACTORS AND ATTORNEYS NEEDS TO BE PUBLISHED. If oral guidance is allowed, you should expect claims to increase. It is impossible to set good policy through oral instructions. Manuals and written materials used for telling attorneys how to prepare title opinions need to be published and available to title examiners, not given over the phone.

Very truly yours,


Richard S. Bordwell
richard@bordwelllaw.com

RSB/lk

I:\z\Rick\150917 ltr to Title Gty

Lawrence, Tara [IFA]

From: Jackie Brown <info@pagecountyabstract.com>
Sent: Tuesday, September 29, 2015 1:18 PM
To: Lawrence, Tara [IFA]
Subject: Chapter 9, "Title Guaranty Division" Administrative Code

Importance: High

Tara:

I guess I would just like to reiterate what was said at the regional meeting in Atlantic on Sept. 23.

I would like to see very strict rules placed on the people/entities that apply for a title plant waiver and then abstract without one. I would like to see that they have to put in each of their abstracts that they did NOT use a title plant and/or a certified title plant to create their abstracts and that they only searched the records at the courthouse or online.

Most of us have spent a lot of time and money to build up our title plants in order to be a member of Title Guaranty which was one of the main requirements back in the day. We work very hard at keeping an accurate title plant and we are very proud of what we have. I feel that it is a great injustice to the customers who receive an abstract that is created without using a certified title plant as that leaves room for many errors and omissions.

Thank you for your time and consideration.

Jackie Brown
ILTA Certified Land Title Professional
Page County Abstract and Title Company
118 N. 16th St., P.O. Box 180, Clarinda, IA 51632
Phone: 712-542-3613
Fax: 712-542-2629
E-mail: info@pagecountyabstract.com
Website: www.pagecountyabstract.com
Member of ILTA, ALTA, Title Guaranty, BBB and NFIB
Proud to have a Certified Title Plant

Lawrence, Tara [IFA]

From: April Cameron <april@cassabstract.com>
Sent: Monday, September 21, 2015 1:21 PM
To: Lawrence, Tara [IFA]
Subject: Iowa Finance Authority Noticed Rule - ARC2128C

Dear Ms. Lawrence,

I would like to share some concerns I have regarding the proposed changes to the Administrative Rules at the hearing set for September 22, 2015.

My concern with the proposed waivers is that the quality and reputation of the abstracting industry will be jeopardized if agencies are granted Title Plant Waivers. Our Title Plants give us access to the most important information that is needed to complete the abstracts correctly and in a timely manner.

The regular cost of doing business would be considered a hardship under the current rules. I do not believe this constitutes a hardship. Further consideration should be given to specify the exact types of hardships that would be accepted under the new rules. Those of us that have Title Plants know the costs of starting and maintaining a Title Plant. We urge that you retain the requirement of Title Plant inspections to keep the quality and accuracy in abstracting.

Granting the waivers could have a long-term effect on our excellent title plant system in Iowa.

Thank you for your consideration in these matters.

Sincerely,
April Cameron
Cass County Abstract Company
518 Chestnut Street
Atlantic, Iowa 50022
Phone: 712-243-2136
Fax: 712-243-4360
april@cassabstract.com

Lawrence, Tara [IFA]

From: Arlene Drennan <arlene@cassabstract.com>
Sent: Monday, September 14, 2015 3:26 PM
To: Lawrence, Tara [IFA]
Subject: Iowa Finance Authority Noticed Rule - ARC2128C

Dear Ms. Lawrence,

I am writing to voice my concerns about the proposed changes to the Administrative Rules which are set for hearing on September 22, 2015.

Together with serving as manager of Cass County Abstract Co., Inc., I am also the Southwest Iowa Regional Vice President for the Iowa Land Title Association. I have been monitoring the Authority's actions concerning the granting of waivers and the use of title plants, and I am concerned with the lack of specificity in the proposed rules in both of those areas.

The purpose of Title Guaranty was to offer a product that would enhance the tried and tested method of abstract and attorney opinion here in Iowa. The rules as currently set forth will serve only to undermine and degrade our excellent system by allowing anyone to "set up shop" with no certification or guarantee of the quality of their work. More consideration should be made concerning these rules before they are adopted.

The current and proposed rules do not define "hardship" satisfactorily. If the current rules are followed, any normal cost of doing business can be considered a hardship. This is not what the creators of Title Guaranty intended. Also, the proposed rules will not require that title plants be inspected for accuracy. This may open the door with a huge "Welcome to Iowa" sign on it and allow anyone, qualified or not, to provide title searches and abstracting in Iowa. Again, I do not believe that is the spirit the creators intended.

Please postpone the approval of these proposed rules and allow for additional time for research and round table discussion.

Thank you for your attention.

Arlene

Arlene L. Drennan

Manager

Certified Land Title Professional
Cass County Abstract Co., Inc.

518 Chestnut Street
Atlantic, IA 50022
Phone 712-243-2136
Fax 712-243-4360

e-mail: arlene@cassabstract.com





TITLE SERVICES
DM CORP

206 6th Avenue, Suite 900

Des Moines, Iowa 50309

P 515.457.9002

F 515.457.9003

www.tscdm.com

IFA 09/21/15 10:09:40/54

9/16/2015

IN RE: PROPOSED IOWA TITLE GUARANTY RULE CHANGES

The following are comments/concerns about the proposed rule changes:

1. Proposed Rule 9.6(13) f Revocation. “f. A complaint or claim demonstrating material noncompliance with these rules, manuals and any other written or oral instructions of the division.” I have two concerns with this proposed new provision. First, it should be limited to complaint or claims that are determined to be founded, material, and indicative of a showing of a practice evidencing lack of knowledge, or disregard, of applicable standards. For example, a random mistake is to be expected. Unfounded complaints may arise from the differences in county practices. Likewise, an abstract meeting ITG Minimum Standards may still garner a complaint, which in most cases by definition would be unfounded- but a complaint nevertheless. I would suggest that it be modified, in part to read as follows: “[a] complaint or claim [determined by the division to be founded that demonstrates] material and ongoing lack of abstracting knowledge, or disregard to applicable standards...” The term “material noncompliance” should be defined. Also “An abstract that is prepared in accordance with the current “Blue Book” promulgated by the Iowa Land Title Association or prepared in accordance with minimum standards promulgated by the IFA does not form the basis of a complaint and may be dismissed without further proceedings.” ITG should also take into consideration a disregard of prior warnings by ITG and the volume of abstracts prepared by the offending abstractor. Second I am concerned that this new complaint process may be used by disgruntled competitors to file frivolous complaints. I strongly advise that the division add a provision that discourages any such unmeritorious use of this section. ITG should require the complainant to explain their case, and show what was done incorrectly to ensure that complaints are actually founded.
2. The Proposed Rules treat a person seeking a waiver to build a title plant differently than a person seeking a title plant waiver. The person seeking a waiver to build a title plant should be subjected to the same requirements and additional specific requirement unique to building a plant. After all, they will be doing direct searches of the records for up to 3 years.

3. The new Proposed Rules 9.7(1) c. defines Grandfathered attorneys as: "Grandfathered attorney. A participating attorney, who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for division purposes, either personally or through persons under the participating attorney's supervision and control, shall be exempt from the requirements to own or lease a title plant. This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney." Under the present Rules waived attorneys are deemed to hold the same status as grandfathered attorneys.

More specifically, present Rule 9.7(8)b.(1) presently provides: "(1) Attorneys granted a permanent waiver hold the same status as grandfathered attorneys and, absent express legislative authority to the contrary, the board will not limit geographically an attorney's ability to abstract for the division." The Proposed Rules omit this shared status between grandfathered and waived attorneys. This is particularly problematic for those attorneys who have or will have received a waiver prior to the effective date of these new rules. In fact, I believe that changing the status of a presently waived attorney amounts to a constitutional taking and as such cannot be accomplished through a rule change. Therefore, I recommend that the proposed rule 9.7(1)(c) be amended to include the following additional sentence: "An attorney who has received a title plant waiver prior to the effective date of these rules <of insert the date> or receives a waiver on or before <insert date that is at least two years from effective date> is considered a "Grandfathered Attorney" pursuant to these rules." If any such addition is deemed inappropriate by the division I would recommend, at the very least, that the division request an opinion from the Iowa Attorney General as to the foregoing prior changing the status of waived attorneys by administrative rulemaking.

4. The Proposed Rules eliminates the Mentoring section of the current rules contained in section 9.7(8)b. which provides: "(4) There are two circumstances when an attorney may be granted a permanent waiver:
1. For attorney applicants with experience abstracting under the supervision and control of an exempt attorney-abstractor, the board shall consider, at a minimum, the following:
 - 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 division board regarding the applicant's ability to abstract.
 - Samples of abstracts prepared by the applicant.

- The division 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.”

There are attorneys who have already embarked upon the mentoring route relying on the existing rules. As such the Proposed Rules may amount to an unconstitutional taking insofar as they have eliminated their right to continue on that route in order to obtain an abstracting waiver. The Proposed Rules need to provide a mechanism for those affected individuals to apply for a waiver under the existing rules.

Attorneys currently mentoring other attorneys in the practice of abstracting should be allowed to apply under the former rules under which they were operating during their abstracting under the oversight of a title plant exempt attorney abstractor. The codification by rule of this mentoring section allowed an attorney to make an investment of two years or more of training to another attorney under his/her mentorship. Doing this should give considerable weight to the attorney recommendation. Recall that the mentoring attorney was taking legal responsibility for the work done by the mentored attorney – for at least two years. This should have great weight – predictably – before the Board upon application of the mentee.

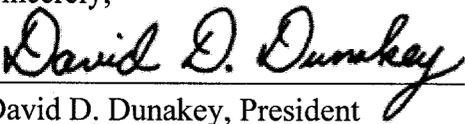
5. Present rule 9.7(8) b. (2) provides: “Although an attorney may abstract through a separate entity, such liability cannot be transferred to a corporate entity nor may an attorney utilize a corporate structure which would shield the attorney from personal liability.” Possible the reason that the language is omitted in the Proposed Rules is because attorneys and non-attorneys are lumped together. I wish to point out that an attorney’s ability to abstract as either the practice of law or as a separate business as an attorney has been confirmed both by the Iowa Supreme Court and Ethics opinions. I don’t believe that the rules can be tailored in such a way as to prevent an attorney from acting in accordance with attorney ethics or as sanctioned by the Iowa Supreme Court. However, with this in mind I can understand the ITG reluctance to allow a non-attorney as an entity to have a waiver and be subject to that entity changing hands, personnel, location, etc. all without the oversight imposed on an attorney practicing law in Iowa – individually or through a separate business entity. Bottom line – when you work with attorney abstractors they are personally responsible, to ITG as well as the Supreme Court, for their actions – notwithstanding the form of their business practice.
6. Proposed Rule 9.7(1) d. (7) provides: “(7) Conditions. A waiver is unique to the recipient and is nontransferable. A waiver recipient shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. Retention of a waiver is dependent on the applicant meeting the requirements for a participant in subsection 9.6. If the waiver recipient fails to meet the terms of the recipient’s participation agreement, the waiver maybe withdrawn by the division board.”

I have several objections to this proposed rule. First, requiring a bond from waived abstractors is unnecessary. If an abstractor is responsible for their errors, they have insurance to cover that. If ITG wants coverage over and above that – for damages caused by no error on the part of the abstractor, that is unacceptable. Insurers will not, for example, insure over the volitional (for example criminal) acts of the principal. It is my recollection that the requirement of a performance bond for abstractors was proposed, considered and rejected long ago. Waived abstractors must carry liability insurance and there is no evidence that any additional coverage is now necessary or has ever been necessary to protect the division or the general public. Requiring bonds and additional forms of indemnification will simply add increased burden and expense.

My second objection is that the proposed rule changes the status of a waived attorney from being a grandfathered attorney to someone who may be forced to reapply each year. This is an unnecessary requirement. My final objection to this new rule is that it unfairly and unreasonably singles-out and burdens waived abstractors. If the division ultimately determines these additional requirements are necessary to protect the division or the general public, then it is unreasonable to impose them solely on waived abstractors. There is absolutely no evidence that the manner in which waived abstractors perform their abstracting services increases risk to the division or the general public. If the division determines that it is appropriate to impose additional bond and indemnity protections and additional reapplications, reviews and other future requirements yet to be determined on waived abstractors, it is equally important to impose any such requirements on all abstractors – waived, grandfathered, or title plant abstractors.

Overall, the rule changes, if passed, will impose a great deal of uncertainty into this process. Applicants will not have much guidance, safe harbors, or the benefits of presumptions from, for example, the mentoring attorney recommendations. Administrative rules are intended to put clarity and predictability into a process – not uncertainty. This will leave the ITG Board in a precarious position – of having to make rulings based on a very limited number of guidelines. No one wants the ITG Board to be placed in a position of having to litigate each decision they make on these matters because of a lack of clear guidance for the waiver applicant. To make the rules even more imprecise is doing ITG, its Board, and the system a true injustice.

Sincerely,


David D. Dunakey, President

Lawrence, Tara [IFA]

From: Sally <abstract@osage.net>
Sent: Friday, September 11, 2015 3:11 PM
To: Lawrence, Tara [IFA]
Subject: Public Comment

Good Afternoon:

I would like to comment on the issue of granting of waivers without title plants. The following is a scenario that we have run across just this past week.

Local realtor provides us with an abstract for continuation and the sale is closed. At the time of closing the out-of-state title company (Moline, IL) offers to hold the abstract for the buyer in safe keeping. The abstract does not come back to Mitchell County for a second continuation. The attorney who owns/operates this title company has a statewide waiver. When the time comes for that real estate to be sold again, this out-of-state company offers the seller to bring the abstract current to expedite the matter. The seller of course agrees, as he/she wants their sale to move as quickly as possible. This updated abstract is not continued by use of a title plant as we are the only one in Mitchell County. Basically the out-of-state title company holds the abstract hostage in order to insure them first opportunity to update the abstract being held in their possession.

Of great concern is situations like this will arise more frequently with the granting of waivers. If waivers are granted there is nothing stopping the lending institutions from having an in house attorney/abstractor that would continue abstracts on all mortgages these lending institutions issue. This would likely put the smaller abstract companies out of business.

We have received abstracts from companies with state wide waivers. Numerous times significant errors are found. For example, the abstract provided to us for continuation stated no estate was of record in Mitchell County. On my review for continuation, there was an estate and the appropriate entries were shown. Had the estate been caught by the waived abstractor the seller would have been saved the additional legal expenses incurred for the preparation of affidavits as well as the recording fees of documents necessary to perfect title.

Another concern about granting of waivers and attorney abstractors is that there is no safety net for mistakes to be caught. If the same company that continues the abstract, prepares the title opinion and closes the transaction there is no opportunity for a set of fresh eyes to review the produce. Potentially you could have an attorney update the abstract, prepare the title opinion and close the transaction. Is that not a conflict of interest? Additionally, the revenues generated from such a transaction benefits only a few people.

Thank you for your consideration.

Sally A. Hertel, Abstractor/ILTA CLTP
MITCHELL COUNTY ABSTRACT COMPANY
(641) 732-4571

www.mitchellcountyabstract.com

PLEASE ACKNOWLEDGE RECEIPT IF REPORT OR INVOICE ARE ATTACHED HERETO.

This message is for the designated recipient only and may contain privileged and confidential information. If you have received it in error, please notify the sender immediately and delete the original. Any use or sharing of this e-mail is prohibited.





303 S. 2ND ST., KNOXVILLE, IA 50138
641.842.3518 • fax 641.842.3528 • e-mail: mctitle@lisco.com

September 18, 2015

Tara Lawrence
Iowa Title Guaranty
2015 Grand Ave.
Des Moines, IA 50312

RE: Notice of Intended Action to amend Chapter 9, "Tide Guaranty Division." Iowa Administrative Code

Dear Ms. Lawrence:

I am writing to you with my concerns with the proposed changes to Administrative Rules – particularly regarding Title Plant Waivers and Title Plant Inspections.

Briefly here are those concerns:

Change of the Definition of Participating Abstractor Current rules allow Persons (typically attorneys) to apply for waivers. I believe that was the intent when ITG was created. To change that to allow all sorts of legal entities opens a huge can of worms. Just remember the fire storm of concerns with the recent Iowa Title Company's application and the Bar Association's response to this.

Title Plant Inspections Made Optional: The heart of whole program is the title search. Why would you want this change after all the recent efforts by ITG and ILTA to validate title plants. It also holds new companies applying for participation in to program to a higher standard than current participants. That is not fair or equitable. Come on, let's work to put out the highest quality title product that we can.

Adequately Define "Hardship and Public Interest Waivers can currently be given when they are "clearly in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state." We are back to the quality issue. The goal of ITG should be to provide the citizens of Iowa with the best title product at a reasonable cost, that we can. To do that we need to define these terms!

I appreciate this opportunity to comment on these issues and encourage you and the ITG Board to amend the proposed changes as noted above.

Sincerely,

Chris K. Hoegh, President
Marion County Title Services
303 S. 2nd St.
Knoxville, IA 5013



**ABSTRACT
ASSOCIATES**
of Webster County, Inc.

Wells Fargo Center - 822 Central Avenue, Suite 204

Fort Dodge, Iowa 50501

515-576-7922 - Fax 515-576-7923

abstractassociatesofiowa.com

September 15, 2015
Tara Lawrence
Iowa Title Guaranty
2015 Grand Ave.
Des Moines, IA 50312

Ms. Lawrence,

I am concerned that the language revisions proposed by Title Guaranty diminish the role of Certified Title Plant use in the Iowa land transfer industry.

If Title Guaranty decides to have no inspections of Title Plants, how is the public really being served and/or protected? Previously, the quality and integrity of Title Plants in our state, were integral parts of the Title Guaranty philosophy, mantra and business model. What has changed? Why is Title Guaranty lowering standards?

When development integrity is not challenged, checked, or inspected, Title Plant effectiveness will diminish and Iowa's Real Estate transfer claims will increase. A quality Title Plant program provides the mechanism to support Iowa Land transfer programs, effectively.

Please re-look at the proposed wording in the new rule 9.6(12) versus the old rule 9.7(10). The old rule specifies the Title Plant inspection "shall" be a priority. Lets keep Title Plants, their development, maintenance, integrity, regular inspection and certification, part of Iowa Title Guaranty Rules that lead Iowa's land transfer program.

Thank you.

Ted Huggins
Abstract Associates of Iowa, Inc.
serving Calhoun, Webster and Wright counties
822 Central Ave. Ste 204
Fort Dodge, Iowa
515-576-7922

Lawrence, Tara [IFA]

From: Kyle Kruidenier <KKruidenier@sullivan-ward.com>
Sent: Thursday, September 17, 2015 10:36 AM
To: Lawrence, Tara [IFA]
Subject: Proposed Rule Amendments

Good morning Tara –

Thank you for your work as Interim Director. I just wanted to voice my concern regarding the proposed Rule amendment to the definition of “Abstract”. I would be opposed to any change in the definition that reduced an abstractor’s duty to show all matters of record. I think that the proposed rule change would be a detriment to our title system and more importantly to our consumer clients.

Thank you,

Kyle

Sullivan & Ward, P.C.
Kyle Kruidenier
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
Direct: 515-247-4728
515-244-3500 | fax 515-244-3599
email: kkruidenier@sullivan-ward.com
web: www.sullivan-ward.com
blog: www.iowa-lawblog.com



Please consider the environment before printing this e-mail

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient or believe that you may have received this communication in error, please reply to the sender indicating that fact and delete the copy you received. In addition, you should not print, copy, retransmit, disseminate, or otherwise use the information. THANK YOU

Lawrence, Tara [IFA]

From: Janel McLain <janel@unioncoabst.com>
Sent: Monday, September 21, 2015 3:59 PM
To: Lawrence, Tara [IFA]
Subject: Letter of Complaint Regarding Implementation of Waivers

Title Guaranty
Attn: Tara Lawrence, Interim Director

RE: Implementation of Waivers

Good Afternoon,

I'm writing you today to express how disappointed, frustrated and angry I am to hear that Title Guaranty is planning on implementing Waivers. This action will obviously lead to Abstractors' going out of business; as well an inferior product....how could it not? Individuals with waivers may not have access to all the information needed, they won't need inspected since they don't have a Title Plant...are these people going to be required to follow the new privacy guidelines? I know for a fact that some Attorneys are ignoring that, acting as if they don't have to comply; how are you going to ensure these people with waivers are following the new Privacy Guidelines? I foresee many problems with this action in the future should Waivers be approved. Union County Abstract, Inc. has always strived to follow the Blue Book and put out the best product we can, we're able to do this because we have a complete Title Plant and comply with all regulations required by Title Guaranty.

Implementing waivers will most certainly hurt our business. It is my opinion this decision is obviously not being made to improve our businesses or products, it's to appease people who don't want to put the effort and money into creating a Title Plant, in essence, lowering standards. This is a horrible decision that will negatively affect the abstractors and the products that are put out.

I hope my concerns will be considered when voting on this action.

Thank you,

Janel McLain, Abstractor
Union County Abstract, Inc.
107 E. Montgomery St.
Creston, IA 50801
641-782-4610
www.unioncoabst.com



Iowa Land Title Association

P.O. Box 444 • Carroll, IA 51401 • 800.778.3789 • ILTA@austin.rr.com

September 15, 2015

Tara Lawrence
Iowa Title Guaranty
2015 Grand Ave.
Des Moines, IA 50312

RE: Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code

Dear Ms. Lawrence:

I am writing to you on behalf of the board of directors of the Iowa Land Title Association, which represents 140 members throughout Iowa. The purpose of this letter is to comment upon the proposed amendments to Title 265, Chapter 9, Iowa Administrative Code.

General and Introductory Comments on Proposed Rules

It is the policy of the ILTA to oppose any applications for statewide waivers, and to support applications for provisional waivers for people that are building a title plant for a specified county. This position is unlikely to change.

As you know, the legislature specifically required that a title plant be used and maintained for the issuance of title guaranty certificates.¹ We agree with the sentiment expressed in the proposed rules that "the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates."²

We understand that there are limits upon Iowa Title Guaranty's authority to interpret the law.³ This does not mean that the agency cannot define terms, but rather, it means that a court may correct "errors at law," if there are errors to be found. Iowa Title Guaranty successfully convinced the Iowa Supreme Court that it had not made such errors,⁴ but the court-approved definitions remain substantively lacking. While the Division has used application forms to draw out some information, the Iowa Administrative Rules should be used to describe the evidence necessary to sustain a waiver.

Having applied criteria that have been sustained by the courts does not mean that the terms cannot be further refined. The primary problem with the old rules and the new rules, which are nearly identical with respect to the hardship and public interest tests, is that they lack any metrics or method of analyzing the metrics to decide whether the tests and definitions are satisfied. Respectfully, we believe that Iowa Title Guaranty has not adequately set out important definitions or provided adequate guidelines for obtaining a title plant waiver.

The Iowa Land Title Association believes that the proposed rules do not adequately or accurately set out the elements required to obtain a title plant waiver. The lack of metrics and the lack qualitative analysis required in order to sustain or deny an application will allow board decisions based on unspecified facts on title plant waivers that expose the board to future litigation over these waivers on the grounds that they are essentially arbitrary and contrary to law.⁵

Specific Comments on Proposed Rules

The Iowa Land Title Association has the following specific comments and issues with the proposed rules:

1. The proposed rules do not describe the types of information necessary to sustain an application for a title plant waiver. Proposed Rule 9.7(1)(d)(3)(8) leaves entirely to the applicant to propose "relevant facts that the applicant believes would justify a waiver."⁶ Proposed Rule 9.7(1)(d)(3) omits from the list of factors any type of information that would tend to show, for example, (a) the conditions in the market; (b) full disclosure of applicant's financial situation, (c) the actual costs of the title plant requirement, and (d) an analysis of effects on other regulated parties.
2. The proposed rules do not describe the type and degree of "substantial evidence" necessary to sustain an application for a title plant waiver. Proposed Rule 9.7(1)(d)(6)(4) leaves the "final decision on whether the circumstances justify the granting of a waiver ... at the sole discretion of the division board upon consideration of all relevant factors." The relevant factors include "the facts and circumstances set out in the application." Nowhere in the rules is there a set of qualitative or quantitative factors that the Iowa Title Guaranty staff or board is to apply.
3. Proposed Rule 9.7(1)(d) appears to adopt an improper new balancing test: "The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price." This new test is contrary to the expressed statutory preference for a title plant,⁷ and should be stricken out. The only expressed purpose of the title guaranty program is "providing, as an adjunct to the abstract-attorney's title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state."⁸
4. Proposed Rule 9.7(1)(d)(6)(4) lacks reference to the proper standards for considering the proposed waivers and should be revised to incorporate these expressly. As required under the Administrative Procedures Act and district court rulings, the board must conduct qualitative analysis of the "substantial evidence" particularly applying the "clear and convincing evidence."⁹
5. Proposed Rule 9.7(1)(d)(5)(3) is inadequate in its description of what is and is not acceptable and substantial evidence of "hardship" under the statute. Specifically:
 - 5.1. The proposed rule should expressly adopt the statutory requirement of proof of an "undue hardship."¹⁰ Iowa Code § 17A.9A(2)(a) unequivocally requires the board to use a higher standard that it has traditionally applied.

5.2. The proposed rule should expressly adopt a statement that the mere existence of costs of the creation or maintenance of a title plant is not sufficient evidence of hardship. Given the board's previous interpretation that a financial hardship alone may be deemed sufficient, the lack of a specific statement in the rule creates a false assumption that any capital outlay may be deemed a hardship. This is contrary to the law.¹¹ As one court has said: "Business start-up costs are unavoidable and in our free market cannot be characterized as imposing an undue hardship merely because they are somewhat high. Rather it must be shown that the costs are so great that they will cause an excessive or unwarranted deprivation to the person incurring the cost."¹²

5.3. Furthermore, the rule should require that the qualitative and quantitative analyses be provided for each county for which a waiver is sought. Adoption of this standard is necessary to address those applicants that would hold up the cost of obtaining a title plant in two or 99 counties as an impediment to complying with the statute.

We have attached to this letter as Exhibit A, a proposed revision to Proposed Rule 9.7(1)(d)(5)(3).

6. Proposed Rule 9.7(1)(d)(5)(4) continues to be inadequate in describing the "public interest" test based on six of the seven criteria used previously and cited by the Iowa Supreme Court.¹³ There is no reason that the criteria should not be qualitatively and quantitatively described. The criteria should have substance and weight.

6.1. The last criteria listed, "protecting consumers," should be first and foremost and weighted heavily in favor of consumers, and especially those individuals having little understanding of title matters.

6.2. The criteria of "increasing competition among abstractors" is a meaningless criteria and adds nothing to the analysis of whether public interest will be served. Our members do not need protection from competition. There is healthy competition in small markets and large markets throughout the state. Nevertheless, every applicant can state unequivocally that the applicant will increase competition if the applicant commences operations. The condition will be true in every case. That meaningless criteria should be stricken and replaced with a qualitative analysis of whether the market conditions are somehow demonstrably in need of change and the statutorily required analysis of how that change will affect other regulated parties.¹⁴

6.3. The criteria of "improving the quality of land titles" is nebulous and should be replaced with an analysis of how the applicant can ensure the integrity of land titles. This is the expressed legislative intent of the attorney-abstract system.¹⁵ The applicant should describe, in detail, how the applicant will ensure that proper abstracting standards can and will be upheld in the absence of a title plant.

6.4. Furthermore, the rule must require that applicant produce evidence for each county for which a waiver is sought. Conditions vary greatly across the state, and the board cannot reasonably act upon a waiver application that treats all of the counties in the state or region as the same.

We have attached to this letter as Exhibit B, a proposed revision to Proposed Rule 9.7(1)(d)(5)(4).

7. Proposed Rule 9.1 inappropriately changes the definition of “participating abstractor” broadening the scope of the definition. Iowa Land Title Association believes that the present rule is correct. We suggest that the proposed rule be modified as follows:

“Participating abstractor” means AN ABTRACTOR—a person who IS ENGAGED IN THE PRACTICE OF SEARCHING PUBLIC RECORDS FOR THE PURPOSE OF CREATING ABSTRACTS OF TITLE TO REAL PROPERTY IN IOWA AND WHO is authorized by the division to prepare abstracts for division purposes.

8. Proposed Rule 9.7(1)(d)(7) lacks a mechanism for accountability for waivers. It is fundamental to the mission of Iowa Title Guaranty to provide title assurance while controlling risk. Iowa Land Title Association does not favor any change in the rules allowing for waivers to an entity, but if a waiver were considered, it would have to be tied to a principal individual abstractor and ensuring that the waiver will be reviewed. It is necessary to tie a waiver to an individual because a waiver granted to an entity, in theory, lasts forever. We suggest that the proposed rule be modified as follows:

Conditions. A waiver is unique to the recipient and is nontransferable AND CONDITIONED UPON THE ON-GOING, ACTIVE EMPLOYMENT OF A SPECIFIED PRINCIPAL INDIVIDUAL (THE “PRINCIPAL”) WHO ALSO IS QUALIFIED AS A PARTICIPATING ABTRACTOR. A waiver recipient AND THE PRINCIPAL shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient AND PRINCIPAL to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division WILL ~~may~~ review the waiver—~~recipient~~ annually and may require a renewal, modification or addition to any required assurances. THE RECIPIENT SHALL NOTIFY THE DIVISION OF THE DEATH, DISABILITY, OR DISSOCIATION OF THE PRINCIPAL FROM THE RECIPIENT. UPON THE DEATH, DISABILITY, OR DISSOCIATION OF THE PRINCIPAL, A RECIPIENT SHALL DISCONTINUE ABSTRACTING.

Request for Regulatory Analysis

Pursuant to section 17A.4A, Code of Iowa (2015), Iowa Land Title Association, which represents at least 25 small businesses that may be affected by the rule-making, hereby requests that Iowa Title Guaranty conduct a regulatory analysis.¹⁶ We believe, quite frankly, that the proposed rules would have a substantial impact on small abstracting businesses all over the State of Iowa.

Request for Hearing

We understand that Iowa Title Guaranty will conduct a hearing on September 22, 2015. In the event that the hearing is cancelled or otherwise not held, Iowa Land Title Association requests that the Division hold a hearing on the proposed rules. We will have members present at the presently scheduled hearing or any other substituted hearing.

Sincerely,



Mike McLain, President
Iowa Land Title Association Board of Directors

Notes

¹ Iowa Code § 16.91(5)(a)(2) (“each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division”).

² Proposed Rule 9.7(1)(d).

³ Iowa Code § 17A.19(10)(c); Iowa Land Title Ass'n v. Iowa Fin. Auth., 771 N.W.2d 399, 402 (Iowa 2009).

⁴ Iowa Land Title Ass'n v. Iowa Fin. Auth., 771 N.W.2d 399, 402 (Iowa 2009).

⁵ Iowa Code § 17A.19(10)(n).

⁶ Proposed Rule 9.7(1)(d)(3)(8).

⁷ Iowa Code § 16.91(5)(a)(2) (“each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division”).

⁸ Iowa Code § 16.4C.

⁹ See Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 23 at p. 8-9) (the applicant “must have shown by clear and convincing evidence, that the requirement would cause [the applicant] to suffer an excessive or unwarranted deprivation.”).

¹⁰ Iowa Code § 17A.9A(2)(a). Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 23 & 24 at p. 8-9) (the applicant “must have shown by clear and convincing evidence, that the requirement would cause [the applicant] to suffer an excessive or unwarranted deprivation.”).

¹¹ Iowa Code § 17A.9A(2)(a). Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 23 at p. 8-9) (the applicant “must have shown by clear and convincing evidence, that the requirement would cause [the applicant] to suffer an excessive or unwarranted deprivation.”).

¹² Des Moines County Abstract Company v Iowa Finance Authority, Des Moines County Equity case No. CVEQ 006 597 (slip op. ¶ 24 at p. 9).

¹³ 265 Iowa Admin. Code § 9.7(2).

¹⁴ Iowa Code § 17A.9A(2)(b).

¹⁵ Iowa Code § 16.4C.

¹⁶ Iowa Code § 17A.4A.

Exhibit A

Suggested form of Hardship Rule 9.7(1)(d)(5)(3):

For purposes of subrule 9.7(1)“d”, THE TERM “hardship,” AS REQUIRED BY SECTIONS 16.91(5) AND 17A.9A(2), CODE OF IOWA, means CLEAR AND CONVINCING EVIDENCE OF EXCESSIVE OR UNWARRANTED 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. THE TERM “HARDSHIP” MAY MEAN AND INCLUDE A FINANCIAL HARDSHIP ALONE. AN APPLICANT MUST DEMONSTRATE HARDSHIP UNDER THE “CLEAR AND CONVINCING” STANDARD BY SUBSTANTIAL EVIDENCE THAT INCLUDES FOR EACH COUNTY FOR WHICH A WAIVER IS SOUGHT A QUALITATIVE ANALYSIS OF AN APPLICANT’S FINANCIAL SITUATION AND THE ACTUAL COSTS OF THE TITLE PLANT REQUIREMENT. EVIDENCE OF UNAVOIDABLE BUSINESS START-UP COSTS AND NORMAL ON-GOING MAINTENANCE COSTS WITHOUT OTHER EVIDENCE IS NOT SUBSTANTIAL EVIDENCE OF HARDSHIP.

Exhibit B

Suggested form of Public Interest Rule 9.7(1)(d)(5)(4):

For purposes of subrule 9.7(1)“d”, THE TERM “public interest” means that which is beneficial to the public as a whole ~~CONSISTENT WITH THE LEGISLATIVE FINDINGS AND MANDATES OF SECTION 16.91,~~ including ~~THE TERM “PUBLIC INTEREST” MAY MEAN AND INCLUDE,~~ but is not limited to, (A) PROTECTING CONSUMERS, PARTICULARLY THOSE INDIVIDUALS HAVING LITTLE UNDERSTANDING OF TITLE MATTERS, ~~increasing competition among abstractors,~~ (B) ENSURING THE INTEGRITY OF THE LAND TITLE SYSTEM, (C) IMPROVING THE TITLE ASSURANCE SYSTEM AND DECREASING THE RISK EXPOSURE OF THE DIVISION AND PUBLIC FUNDS, (D) encouraging the use of certificates throughout the state, (E) making certificates more competitive than out-of-state title insurance, ~~increasing the division’s market share, improving the quality of land titles, and protecting consumers,~~ AND (F) IMPROVING FREE MARKET CONDITIONS. IN ACCORDANCE WITH SECTIONS 16.91(5) AND 17A.9A(2), CODE OF IOWA, AN APPLICANT MUST DEMONSTRATE PUBLIC INTEREST UNDER THE “CLEAR AND CONVINCING” STANDARD BY SUBSTANTIAL EVIDENCE THAT INCLUDES FOR EACH COUNTY FOR WHICH A WAIVER IS SOUGHT QUALITATIVE AND QUANTITATIVE ANALYSES FOR EACH COUNTY IN WHICH A WAIVER IS SOUGHT OF EXISTING AND PROJECTED MARKET CONDITIONS, A STATEMENT OF WHETHER THE WAIVER WOULD AFFECT THE SUBSTANTIAL LEGAL RIGHTS OF ANY PERSON, AND A STATEMENT OF WHETHER AND HOW THE WAIVER WILL AFFORD SUBSTANTIALLY EQUAL PROTECTION OF PUBLIC WELFARE BY MEANS OTHER THAN REQUIRED BY SECTION 16.91(5), CODE OF IOWA, AND THESE RULES.

Lawrence, Tara [IFA]

From: Scott McLain <scott@unioncoabst.com>
Sent: Monday, September 21, 2015 11:37 AM
To: Lawrence, Tara [IFA]
Subject: STATEWIDE WAIVERS - NOT HAPPY

Title Guaranty:

Handing out Statewide waivers to anyone and everyone is a bad idea. We legitimate Abstractor's work very hard to comply with every regulation that comes our way; will these new waived attorneys have to follow the same? or will they have different rules? Our office, Union County Abstract, spends hundreds of dollars a year to maintain a COMPLETE TITLE PLANT, which dates back to 1856. Our Union County offices electronic records have only been online for short time. Any attorney sitting across the state looking online is not going to be able to find any Deed, Mortgage of Easement that are over 10 years old. Our Clerk's office only started the e-filings, May Of 2014.

For example, I just did an abstract where the parties were divorced back in the mid 80's. A Waivered Attorney is not going to be able to find that divorce file.

The attorneys here in Union County, would not accept that abstract without the divorce file on it.

My family has been doing title work in Union County for over 40 years. There's not a single Waivered Attorney that can produce a better product than Union County Abstract, Inc. can provide. Abstracts or any property search in general would be INFERIOR to anything that any of the 99 legitimate abstract offices can provide.

I take personal offense to this whole process. Reason being, the original attorney that started all of this statewide waiver nonsense, Charles Hendricks, lied about Union County Abstract and falsified his application by claiming we were charging \$200.00 for Pre-Closing Searches. And you guys believed it without checking to see that we only charged \$35.00. I've had a few of Mr. Hendricks, inferior abstracts in my office, and I've had to correct and/or add additional information to them. Because he doesn't have a functioning title plant.

I guess one lying attorney is more important than the families in 99 counties who take our title work very seriously.

You guys will do what you want anyway, I feel like our opinions really don't matter.

But if our opinions do matter, I request that you reject, deny, prevent any unqualified person/entity without a certified, inspected, Title Plant, from getting any waivers, ever.

Thank you for listening and I hope you do the right thing.

Scott McLain
Union County Abstract, Inc.
107 East Montgomery Street
Creston, Iowa 50801

Lawrence, Tara [IFA]

From: Jim Nervig <Jim.Nervig@brickgentrylaw.com>
Sent: Thursday, September 17, 2015 10:20 AM
To: Lawrence, Tara [IFA]
Subject: Fwd: [ISBA RealEstate] Title Guaranty New Definition of "Abstract"
Attachments: 15.9.17.ProposedTitleGuarantyRuleAmendments.pdf

Tara:

I am forwarding to you my email advisory to the ISBA real estate listserve. As you know, I have been very concerned that TG adoption of diluted abstract standards can result in matters of record not being disclosed. Your proposed new abstract definition only elevates my concerns. I think it is necessary for Title Guaranty to address how a consumer is protected.

Jim Nervig
Attorney at Law



6701 Westown Parkway, Suite 100
West Des Moines, IA 50266-7703
T: 515.274.1450
F: 515.274.1488
jim.nervig@brickgentrylaw.com
www.brickgentrylaw.com



FOLLOW US

Confidentiality Notice: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Treasury Circular 230 Disclosure: To the extent this communication contains any statement regarding federal taxes, that statement was not written or intended to be used, and it cannot be used, by any person (i) as a basis for avoiding federal tax penalties that may be imposed on that person, or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

Begin forwarded message:

From: Jim Nervig <realestate@iabar.org>
Subject: [ISBA RealEstate] Title Guaranty New Definition of "Abstract"
Date: September 17, 2015 10:07:24 AM CDT
To: "realestate@iabar.org" <realestate@iabar.org>
Reply-To: <realestate@iabar.org>

It is extremely important for all of you to be aware of the change proposed by Title Guaranty to the definition of "abstract" in IAC Chapter 9 "Iowa Title Guaranty Division." Attached is a complete copy of the 26-page set of proposed amendments. Section 265-9.1(16), Definitions, currently defines "abstract" as follows (shown on page 3 of the amendments):

◆Abstract of title◆ or ◆abstract,◆ for the purposes of the title guaranty program, means a written or electronic summary of all matters of record including, but not limited to, grants, conveyances, easements, encumbrances, wills, and judicial proceedings affecting title to a specific parcel of real estate, together with a statement including, but not limited to, all liens, judgments, taxes and special assessments affecting the property and a certification by a participating abstractor that the summary is complete and accurate; provided, however, that for purposes of issuance of a title guaranty certificate covering nonpurchase financing, and for only such purposes, the ◆abstract of title◆ or ◆abstract◆ may also mean a title guaranty report of title.

The amendments delete the current definition. On page 18 of the amendments, the proposed new definition of "abstract" is set forth as follows:

"Abstract" means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, "abstract" may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

The current definition mandates that abstract must include "all matters of record"--PERIOD. The new definition qualifies the requirement by stating that the abstract is acceptable if "prepared in accordance with minimum standards adopted by the division." The obvious question is--Why was this qualification added? The current standard was intended to protect consumers by placing the affirmative duty on abstractors to show every matter of record. Is the amendment intended to further a new policy that it is acceptable to not show a matter of record if it was not disclosed by a search conducted under whatever minimum standards have been adopted by the Title Guaranty Board? If this is the case, how is the consumer protected?

Written comments on the proposed amendment will be received by IFA/ITG until 4:30 p.m. on September 22, 2015. Comments may be addressed to Tara Lawrence, Iowa Title Guaranty, 2015 Grand Avenue, Des Moines, IA 50312, or faxed to Tara at 515.725.4901 or emailed to tara.lawrence@iowa.gov.

Jim Nervig
Attorney at Law



6701 Westown Parkway, Suite 100
West Des Moines, IA 50266-7703
T: 515.274.1450
F: 515.274.1488
jim.nervig@brickgentrylaw.com



FOLLOW US

Confidentiality Notice: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Treasury Circular 230 Disclosure: To the extent this communication contains any statement regarding federal taxes, that statement was not written or intended to be used, and it cannot be used, by any person (i) as a basis for avoiding federal tax penalties that may be imposed on that person, or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

(NOTE: Reply defaults to the entire list)

To unsubscribe from this list, send a mail message to "<mailto:unsubscribe@iabar.org>" with the following in the subject and the first line in the body of the message:

unsubscribe realestate

Lawrence, Tara [IFA]

From: Nancy Nevins <nevinsn@webstercoabstract.com>
Sent: Tuesday, September 22, 2015 3:40 PM
To: Lawrence, Tara [IFA]
Subject: administrative rules comments

Tara,

I listened to your talk at the regional meeting yesterday. Thank you for visiting and talking to us.

I waited for some real discussion on the administrative rules, but felt there really wasn't much said. I was hoping for information to assist me in sending my comments. After discussing general things, you briefly mentioned some of the rules that were in question at the end of your talk.

I have read through the proposed changes and feel that the following comments say it best. I am very concerned for the majority of local abstracters and their businesses. The integrity of the system is being threatened by many of the changes that have taken place.

The rule making re-defines "participating abstractor"

- Changes the definition from "abstractor" to "person" which is defined in the rule and by *Code* to include "legal entity, including corporation, limited liability company, partnership", allowing for an entity to now receive a waiver – prior to now, waivers have been primarily given to individual attorneys
- First entity waiver received in October 2014 & rejected by the Iowa Title Guaranty Division
- Both ILTA & the Iowa State Bar Association opposed last year's entity waiver.

The rule making eliminates inspections of title plants

- Changes from "shall" in old rule 9.7(10) to "may" in new rule 9.6(12)
- If Iowa Title Guaranty decides to make no inspections, how is the public served or protected?
- If title plants are not inspected, this increases the State's claims exposure.

The rule making fails to adequately define "hardship" or "public interest"

- In my opinion, it appears that merely the normal cost of doing business is a "hardship", given past waivers granted.
- "public interest": - though there are factors listed on both the new and old rules, to this point a statement that competition will be increased and that the waived abstractor will encourage Iowa Title Guaranty products has been enough to meet this standard – a bar set so low as to render this standard meaningless.
- Both the ILTA and the Iowa State Bar Association have strongly encouraged the Iowa Title Guaranty Division to make these standards more specific and I agree with their stand.

Thank you,

Nancy Nevins,

Manager, ILTA Certified Land Title Professional
Webster County Abstract Company
628 Central Ave.
Fort Dodge, IA 50501

nevinsn@webstercoabstract.com

515.573.3341

515.573.8806 Fax



Madison County Abstract Co.

102 W. Court Ave.
Winterset, Iowa 50273
(515) 462-4524

Date: September 16, 2015

TO: Title Guaranty
Title Guaranty Board of Directors
Tara Lawrence, Director
2015 Grand Ave.
Des Moines, IA 50312

RE: Administrative Rules Revisions

Dear Director and Board of Directors:

I would like to strongly encourage you to reconsider the Administrative Rules currently under your consideration. As written, the proposed Administrative Rules pertaining to waiver applicants will have a significant NEGATIVE impact on Title Guaranty and on the integrity of land title in the state of Iowa.

More specifically, I ask you to further consider the following Administrative Rules and their likely immediate impact on your abstracting partners and the long-term consequences to Title Guaranty itself.

1. **Change in Definition of Participating Abstractor:** The previous Administrative Rules allowed for PERSONS (typically attorneys) to apply for waivers. The new Administrative Rules will re-define "persons" to include any legal entity, including corporations, limited liability companies, or partnerships.

Consequence: This will effectively eliminate any individuals from applying for waivers because it would be very advantageous to apply as a corporation, LLC or partnership to limit personal liability and secure a membership in Title Guaranty which would last indefinitely, as opposed to personal waivers which terminate upon death of the waived individual. Moving forward, under this rule, it would be reasonable to expect ALL companies to apply for a waiver of the Title Plant requirement and compete head-to-head with members who have Title Plants. At that point, it would also be reasonable to expect ALL CURRENT members who have Title Plants to apply for waivers as well so that they can compete on a level playing field with the waived companies. This change, by itself, will completely undermine Iowa Code 16.91(2). **Is that outcome acceptable to Title Guaranty?** Furthermore, without the Title Plant requirement, what purpose does Title Guaranty serve other than a state-owned monopoly on title insurance

in the State of Iowa?

The key to differentiating Title Guaranty from out of state Title Insurance companies is the Title Plant and abstractor-attorney process as outlined in Iowa Code 16.91.

2. **Failure to Adequately Define "Hardship"**: Iowa Code 16.91 provides that "The division may waive the requirements of this subsection pursuant to an application of an attorney or abstractor which shows that the requirements impose a *hardship* to the attorney or abstractor and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state." Notably, the proposed Administrative Rules provide no qualitative standard for "hardship".

Consequence: Based on prior waivers, it appears that merely the normal cost of doing business, including creating and maintaining a Title Plant, is considered a hardship. Consequently, any waiver applicant who claims ANY cost for start-up would presumably further qualify for a waiver under this rule. Moving forward, it would be reasonable to expect ALL CURRENT members who have Title Plants to apply for waivers moving forward so that they can compete on a level playing field with the waived companies, knowing that apparently the cost of maintaining a Title Plant would also be considered a hardship. This proposed rule acts to further undermine Iowa Code 16.91(2). **Is that outcome acceptable to Title Guaranty?**

There should clearly be some standard applied. I suggest that Title Guaranty consider asking the waiver applicant to make an investment in Title Plants that is commensurate with the potential financial reward (i.e. revenue projections), as detailed in the applicant's business plan.

3. **Failure to Adequately Define "Public Interest"**: Iowa Code 16.91 provides that "The division may waive the requirements of this subsection pursuant to an application of an attorney or abstractor which shows that the requirements impose a hardship to the attorney or abstractor *and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.*" The proposed Administrative Rules provide no qualitative standard for "public interest".

Consequence: Based on prior waivers, it appears that merely stating that competition will be increased and that the waived abstractor will encourage the use of Title Guaranty products has been adequate to meet this standard. The Board should require additional **EVIDENCE** by all waiver applicants that 1) the county in which the waiver is granted is currently lacking in competition which

results in less competitive pricing and/or lack of quality service, and 2) that granting another Title Plant waiver for that county would effectively address those competitive shortcomings.

In summary, the law clearly intends for waivers to be an EXCEPTION for attorneys in under-served parts of the state, not the RULE for any and all applicants who want to avoid the legitimate costs of starting a business. The proposed Administrative Rules will undermine Iowa Code 16.91 and will ultimately render it meaningless as to Title Plants being the "preferred method". As I have outlined above, the proposed rules are truly the beginning of the end for Title Plants in the State of Iowa and, therefore, the end of the most important differentiation between Title Guaranty and every other title insurance company in the United States.

I am confident that Title Guaranty can and will continue to do business successfully under the proposed rules, even if that means working with waived abstractors only in the future. However, doesn't Title Guaranty have some obligation to honor the clear letter and intent of the law as it was written? Doesn't Title Guaranty have some obligation to champion the most important distinction the law could possibly provide to differentiate it from its competition?

I implore you to revise the Administrative Rules in a manner that would honor the letter and intent of the law and secure the future of Title Guaranty as the most trusted provider of quality guarantees in the world.

Thank you for your time and consideration in this most important matter.

Sincerely,
Darin O'Brien
President

September 21, 2015

Tara Lawrence
Iowa Title Guaranty
2015 Grand Ave.
Des Moines, IA 50312

Re: Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code

Dear Ms. Lawrence:

I am writing this letter to express my concerns with a number of things in the re-write of Chapter 9, but especially changing the definition from "abstractor" to "person" as defined by Iowa Code. Allowing waivers to entities, rather than individuals is contrary to the original intent of the law and would even allow a title insurance company to theoretically apply for a waiver. I have been in the abstracting business for over 42 years and I was active in the business when title guaranty was established. It was established to protect the Iowa system of abstracts and attorney opinions as well as the title plant system, which has always been used in Iowa. Only in a couple of areas of Iowa were there problems with title plants and it was only in those areas that attorneys were originally grandfathered in as abstractors without plants. The granting of numerous statewide waivers is clearly not what was intended when this law was established.

I also believe that the public interest is not satisfied by the continued granting of permanent waivers and that eventually ITG will face losses similar to title insurance companies if we continue down this path.

Finally I am concerned that the inspection of title plants is no longer mandated under the new rules, as they were under the old rules.

Thank you for your consideration of my ideas.



Gary Reeder, President
Delaware County Abstract Company, Inc.

Lawrence, Tara [IFA]

From: evabstco@mchsi.com
Sent: Tuesday, September 22, 2015 10:06 AM
To: Lawrence, Tara [IFA]
Subject: ILTA concerns

Ms. Lawrence:

I have recently read with great interest the excellent letter received by you and authored by Mike McClain , President of ILTA.

Our abstract company in Emmet County has been owned and directed by my family since 1937. With the capable assistance of some fine people , we have established a record that has earned the confidence of the community during these past 78 years. Any local lawyer , banker , or realtor will verify our business reputation.

Based on Mr. McClain's letter , I wonder if ITG is attempting to promulgate rules which will seriously damage Iowa abstract companies , and essentially change the Iowa system of title research. And do so based on the claim that changes are needed to promote competition and choice for the consumer. In fact , it seems more likely that the opposite effect is the more likely outcome.

I strongly recommend ITG conduct a regulatory analysis before these new rules are implemented. Not doing so seems disturbing and possibly improper.

Please consider the potential effect these rules will have on the abstract business in Iowa , and especially on the smaller organizations that have done a fine job for many years in rural communities throughout the state.

In my opinion , the net result of these regulation changes will likely cause a depreciation of the quality of Iowa title work. It seems very clear with so much at stake for so many people , ITG should at a minimum support a regulatory analysis.

James E. Rosendahl
Owner
Estherville Abstract Co.
Estherville , Iowa

BUENA VISTA ABSTRACT & TITLE CO.

218 EAST 5TH STREET P.O. Box 110, STORM LAKE, IA
(712) 732-4150 - FAX (712) 732-5344

September 20, 2015

Tara Lawrence
Iowa Title Guaranty
2015 Grand Avenue
Des Moines, IA 50312

RE: Notice of Intended Action to amend Chapter 9, "Title Guaranty Division,"
Iowa Administrative Code

Dear Ms. Lawrence:

I am writing to you on behalf of all 40 year title plant abstract companies and in support of the letter issued September 15, 2015 to Iowa Title Guaranty Division on behalf of the Board of Directors of the Iowa Land Title Association; copy of which is attached. Said letter is well drafted and we support this issues addressed in said letter along with the following concerns.

In the rule making process the number one focus should be on "**public interest**". Where in the rules are qualitative standards set out? We believe that the Abstract/attorney process produced by a 40 year title plant insures that the consumer is guaranteed the quality and accuracy they so deserve. We have all received abstracts that were created by "permanent waiver" companies. These abstracts are incomplete, inaccurate and do not follow the Blue Book standards. Is the abstracter/attorney creating the title search also rendering the opinion? The State's claims exposure will increase. We never had these problems before Iowa Title Guaranty Division started the waiver process!

We recommend that Iowa Title Guaranty Division continues the inspection of title plants. Iowa Land Title Association is contracted with Iowa Title Guaranty Division to inspect title plants. We believe it is Iowa Title Guaranty's responsibility to oversee the accuracy of their participating members. After all, you are insuring our products. If no inspections are made, the State's claims exposure will increase.

We strongly encourage the Iowa Title Guaranty Division to make these standards more specific. We take pride in producing prompt, professional and accurate abstracts because the bar is set high.

Sincerely,

Nancy E. Sadusky

Nancy E. Sadusky, President
Buena Vista Abstract & Title Co.



Lawrence, Tara [IFA]

From: BV Abstract Info <info@buenavistaabstract.com>
Sent: Friday, September 25, 2015 10:13 AM
To: Lawrence, Tara [IFA]
Subject: Proposed Rules

Tara,

I would like to comment on the economic effect on small businesses as a result of the amendment to Chapter 9, "Title Guaranty Division" Administrative Code. I am the owner and president of Buena Vista Abstract & Title Company. Our company will be celebrating 125 years of doing business next year and has maintained a title plant for all those years. Although the cost and time to maintain a title plant is a large part of our budget, we look at it as the cost of doing business. The "permanent waiver" companies do not have this expense of maintaining a title plant, therefore, their costs of doing business is much less. How can we stay competitive?

We believe that the proposed rules would have a substantial impact on small abstracting businesses across the state.

Thank you for your time,

Nancy Sadusky, President
BUENA VISTA ABSTRACT & TITLE CO.
218 E 5th Street, PO Box 110
Storm Lake, IA 50588
ph: 712-732-4150
fax: 712-732-5344
web page: www.BuenaVistaAbstract.com
email: info@buenavistaabstract.com

This electronic transmission and any documents accompanying this electronic transmission contain confidential information belonging to the sender. This information may be legally protected. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient or receive this message in error, you are hereby notified that any disclosure, copying, distribution or taking any action in reliance on or regarding the contents of this electronically transmitted information is strictly prohibited.

Lawrence, Tara [IFA]

From: Patty Shaver <howardcountyabstract@hotmail.com>
Sent: Monday, September 21, 2015 7:40 AM
To: Lawrence, Tara [IFA]
Cc: ILTA@austin.rr.com
Subject: Amendment

Dear Tara,

I oppose the change of the "participating abstractor" in Chapter 9 of the administrative rules. As a member of Title Guaranty, we have complied with every change that has been implemented. I have a certified title plant as was recommended by Title Guaranty, I am a ILTA Certified Land Title Professional and I feel that in allowing this change will destroy our time-honored and tested title plant system. It will endanger our investments in our title plants and allow any entity to "abstract". The changes to rule 9.7 which eliminates inspections of title plants allows these entities easy access and is the demise to the public protection.

In October 2014 Iowa Title Guaranty Division rejected a entity waiver, which both ILTA and ISBA opposed, and yet today, this change is evident. I am asking you to deny any changes to allow any permanent waivers that will only undermine the solid title services that we provide. "Public Interest" is served by protecting our abstracting title system as we have for over 100 years and these proposed changes to do not support the quality control measures that have been implemented by Iowa Title Guaranty and we have been in full compliance.

Patricia M. Shaver,
President and ILTA Certified Land Title Professional
Howard County Abstract & Title Co.
115 South Park Place
Cresco, Iowa 52136



Iowa Title Company
1415 28th St., Ste. #140
West Des Moines, IA 50266
Phone: 515-288-3335
www.iowatitle.com

September 18, 2015

Tara Lawrence, Director
Iowa Title Guaranty
2015 Grand Ave.
Des Moines, IA 50312

RE: Notice of Intended Action to amend Chapter 9, "Title Guaranty Division" Iowa
Administrative Code

Dear Ms. Lawrence:

We are aware that the Iowa Land Title Association ("ILTA") has submitted a letter on behalf of its board of directors representing membership. As a member of the Association, Iowa Title Company ("ITC") is issuing this letter to disavow itself of certain assertions made by ILTA and presents the following views and comments solely representative of Iowa Title Company.

Iowa Title Company's previous waiver application was the first application for a waiver submitted by an entity, and it was denied application based on the ambiguity of the rules rather than our ability to perform our job accurately and efficiently. Iowa Title Company's application was submitted based on our knowledge that we would and could provide professional, quality services pursuant to a waiver.

In 2008, ILTA members and comments from Bill Blue, 2008 ILTA President, appealed to the Iowa Title Guaranty Board to allow entities, not just attorneys, to submit waiver applications. Enclosed please find the Title Guaranty Division Board Meeting Minutes from June 3, 2008 and supporting documentation. As a result, the Iowa Title Guaranty Board modified the administrative rules relating to plant waivers in 2008, and in doing so recognized that non-attorney abstracters should be able to petition for a waiver in the same manner as an attorney abstracter. The waiver rules now include in 265 IAC 9.7(8)(c) the opportunity for a waiver for non-attorney abstracters.

The Iowa Code states:

"16.4C Legislative findings — title guaranty. The general assembly finds and declares that the abstract attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose is served by providing, as an adjunct to the abstract attorney's title opinion system, a low-

cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state."

These findings clearly state that the public purpose is served by the abstract attorney's title opinion system and this system promotes stability for determining the marketability of land title. It does not limit the options to provide this product. Qualified applicants should be considered. Administrative rules should not be designed to limit competition.

ILTA has submitted the following in part:

8. Proposed Rule 9.7(1)(d)(7) lacks a mechanism for accountability for waivers. It is fundamental to the mission of Iowa Title Guaranty to provide title assurance while controlling risk. Iowa Land Title Association does not favor any change in the rules allowing for waivers to an entity, but if a waiver were considered, it would have to be tied to a principal individual abstractor and ensuring that the waiver will be reviewed. It is necessary to tie a waiver to an individual because a waiver granted to an entity, in theory, lasts forever. We suggest that the proposed rule be modified as follows:

Conditions. A waiver is unique to the recipient and is nontransferable AND CONDITIONED UPON THE ON-GOING, ACTIVE EMPLOYMENT OF A SPECIFIED PRINCIPAL INDIVIDUAL (THE "PRINCIPAL") WHO ALSO IS QUALIFIED AS A PARTICIPATING ABSTRACTOR. A waiver recipient AND THE PRINCIPAL shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient AND PRINCIPAL to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division WILL MAY review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. THE RECIPIENT SHALL NOTIFY THE DIVISION OF THE DEATH, DISABILITY, OR DISSOCIATION OF THE PRINCIPAL FROM THE RECIPIENT. UPON THE DEATH, DISABILITY, OR DISSOCIATION OF THE PRINCIPAL, A RECIPIENT SHALL DISCONTINUE ABSTRACTING.

ITC disagrees. Iowa Title Guaranty has a specific mechanism for accountability, including but not limited to, an annual contract with each participating abstractor. Proposed Rule 9.6(13) ("Revocation") specifically addresses this issue and outlines specific as well as broad "other factors as determined by the division" that clearly establishes a mechanism for accountability.

In addition, ILTA's proposed change to this section would create inconsistency. Currently, participating abstractors consist of entities not individuals. Companies are participating in the program through contracts now, not each individual within the organization. It is the entity that holds the liability insurance, not the individual. It is the entity that owns the title plant, not each employee. If a participating abstractor can currently enter into contract as an entity, then an entity should also be able to become a participating abstractor either with a title plant or a waiver. If an entity were omitted from the definition of "person", then the each individual employee would need a waiver or lease the title plant of their employer. The individual would

be required to hold liability insurance, complete and fulfill the contract. It is illogical and impractical to consider.

Iowa Title Company has the following specific comments with regard to the proposed rules:

1. Proposed Rule 9.7(1)(d)(3)(8) is supported. This criteria is not the measure used by Iowa Title Guaranty for title plant waiver, but rather an inclusive requirement of the application supporting the merits of the criteria for title plant waiver. Therefore, we feel proposed rule is appropriate.
2. Proposed Rule 9.7(1)(d)(1) should be modified for consistency. The word "abstractor" should be changed to "person" or "participating abstractor" as "abstractor" is not defined.
3. We support the definitions under 9.1(16) as proposed, including the new definition of "participating abstractor". Defining "participating abstractor" as a "person who is authorized by the division to prepare abstracts for division purposes" is clear.
4. Proposed Rule 9.7(1)(d)(6)(4) specifically states that "...Relevant factors to be considered include, **but are not limited to** [*emphasis added*], the division directors proposed written ruling, the facts and circumstances set out in the application, any history of professional disciplinary action against the applicant, adverse claims made against the applicant, prior waiver withdrawal actions against the applicant, public comments, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board..." We feel the combination of evidence and material facts provide substantive information that would allow the Board to intelligently approve or deny a waiver.
5. Proposed Rule 9.7(1)(d) states,

"The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price. Iowa Code section 16.91(5)"b" allows the division board to waive the up-to-date title plant requirements under certain conditions."

Iowa Title Company agrees and supports this. ITC believes the 40-year title plant is the preferred method. However, as we work to build a market solution to the demands of our lenders and clients to provide consistent products and pricing more globally, it is imperative that waivers be allowed. TRID and CFPB compliance issues will be effective October 3, 2015. Our clients demand that we provide a solution to address disclosure variance concerns. If ITC is unable to provide the continuity for our clients, they have two options. Option 1 is to use a statewide waived participating abstractor. Option 2 is to use title insurance. As a strong supporter of the abstract title opinion model AND supporter of the Iowa Title Guaranty program, it is imperative, now more than ever,

that we are able to provide a feasible market solution. By eliminating the waiver option for an entity, you create an environment that will reduce competition or drive lenders to seek title insurance alternatives.

6. Iowa Title Company recognizes and respects the ruling of the Supreme Court of Iowa regarding public interest and hardship. ILTA asks to adopt "undue hardship" from Iowa Code §17A.9A(2)(a). This argument effectively seeks to overrule the Iowa Supreme Court's Decision in the *Iowa Land Title* case. It references the "undue hardship" of applicant seeking waiver or variance from the requirements of a rule. In fact, the Supreme Court ruling filed August 21, 2009, uses this referenced Code Section in their ruling as an argument that the legislature knows how to modify the word and the legislature intent was to "allow the board to grant a waiver if the applicant can show a 'hardship' in the sense that word is ordinarily used and understood" rather than more restrictively, when they state as follows:

"The board determined the term "hardship," as used by the legislature in section 16.91(5), did not require a "hardship of an extraordinary magnitude or type." Consequently, it found a "financial hardship alone can constitute hardship." The association claims something more than a financial hardship is required. Neither the Iowa Code nor the Administrative Code in place at the time of the board's decision defined the term "hardship" as used in section 16.91(5).1 When the legislature used the term "hardship" in section 16.91(5), it did not qualify the term. The legislature knows how to modify the word, "hardship," and has done so in many instances. *See, e.g.*, Iowa Code §§ 2C.18 (referring to a "needless hardship"), 13.15 (referring to a "financial hardship"), 17A.9A(2)(a) (referring to an "undue hardship"), 138.12(2) (referring to an "unnecessary hardship"), 232.69(3)(e) (referring to a "significant hardship"), 425.37 (referring to an "unreasonable hardship"), 554.3513(2) (referring to an "economic hardship"), 607A.6 (referring to an "extreme hardship"), 815.9(1)(b) (referring to a "substantial hardship"), 904.902 (referring to a "physical hardship"). Without any modification of the word "hardship" by the legislature, **we must assume the legislative intent in section 16.91(5) was to allow the board to grant a waiver if the applicant can show a "hardship" in the sense that the word is ordinarily used and understood.** [emphasis added]

Iowa Code sections 16.91 and 17A are two entirely different sections dealing with different matters. 17A does not apply to title plant waivers, but rather waivers of *entire rules themselves*. Until the Iowa Legislature modifies Iowa Code 16.91, any administrative alterations to the definition of "hardship" per *Iowa Land Title* would be ineffective as a matter of law.

7. We reiterate our respect and acceptance of the ruling of the Supreme Court of Iowa regarding public interest as well.
8. Although Staff from Iowa Title Guaranty has made no changes to the claims section of the Administrative Rules, we feel consideration of the following should be made to clear the ambiguity of the language used regarding the following:

9.8(2)(c)(5) states that "The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.8(2)"d," that the party is liable and when the claim loss arises from one or more of the following:...(5) Issuance of an abstract, title opinion, commitment or certificate by the party with knowledge that title is defective..."

Although we recognize the intention of the section, this could be construed that any issuance of an abstract, title opinion, commitment or certificate could result in reimburse for a claim loss. Most issuances have knowledge that title is defective. The wording should state that the "failure to disclose that title is defective when issuing" could result in reimbursement of claim loss.

9. Although the intention of Section 9.8(2)(c)(6)(d)(3) is acceptable, the wording is ambiguous and creates the possibility for misinterpretation:

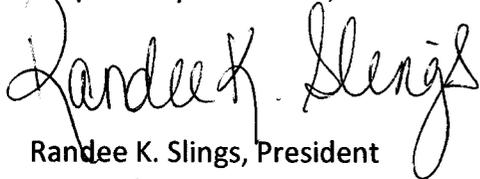
"In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)"c"(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate."

Qualifiers need added to the language to clearly identify the instances where reimbursement recovery can be sought. Suggested language is as follows:

In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2)"c"(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, **improperly** waived an exception, or **erroneously or negligently** endorsed a commitment or certificate."

We appreciate the hard work of the Iowa Title Guaranty Board and staff, and appreciate consideration of our comments and concerns. If you have any questions, please let us know.

Respectfully submitted,



Rande K. Slings, President
Iowa Title Company
Polk-Warren-Dallas-Linn-Scott Counties

NOTICE OF INTENDED ACTION TO AMEND
CHAPTER 9, "TITLE GUARANTY DIVISION"
IOWA ADMINISTRATIVE CODE
SYNOPSIS

To: Tara Lawrence Iowa Title Guaranty (ITG) Director

FROM: Randee K. Slings, President, Iowa Title Company (ITC)

In light of the proposed rule changes to Chapter 9 of the Iowa Administrative Code, Iowa Title Company has reviewed said changes and provided a commentary for Title Guaranty's review. Please accept this Synopsis as a summary of the key points that Iowa Title Company wishes to make.

Iowa Title Company **SUPPORTS:**

- Supreme Court ruling filed August 21, 2009 regarding "public interest" and "hardship"
- Proposed Definitions, including but not limited to, "person" and "participating abstractor"
- Waiver Rules for non-attorney abstractors as modified pursuant to public comment in 2008 from the ILTA President Bill Blue and members of the Association
- Abstract attorney's title opinion system
- Providing competitive options to the public
- Lenders are seeking one-stop-shops that provide consistent products, pricing, wash agreements and familiarity. This helps lenders meet new TRID and CFPB compliance regulations. Without waiver options, lenders have only 2 choices – a statewide waived attorney or title insurance. Waivers allow market solutions to evolve, competition to remain strong, and local title companies to remain relevant
- Allowing ITG to change the requirement of "shall" to "may" regarding title plant inspections.
 - Approximately 1/3 of the Iowa Land Title Association (ILTA) membership does not have an inspected title plant. Another 1/3 has inspected, but non-certified title plants. Requiring inspections may result in increased number of waivers rather than commitment to using the preferred method of searching.
 - Businesses should be able to discern the value of certifying their plants with inspections encouraged

Iowa Title Company **OPPOSES:**

- Administrative Rules that limit competition and/or are proposed with the aim to limit the categories of persons/entities that may apply for a waiver.
- Limiting product options to the public.
- Individual or personal liability – We feel this would require each employee to lease or own a plant or seek a waiver, hold liability insurance, enter into a participating abstractor agreement with ITG, including submitting social security information, professional liability insurance, and provide answers to background questions. Consistency is needed. If an entity is the participating abstractor, then the entity should either own/lease a plant or be able to get a waiver to the requirement. Otherwise, it needs to be the individual who is the participating abstractor, and that creates significant concerns.

Iowa Title Company **SUGGESTS REVISIONS:**

- 9.8(2)(c)(5) is acceptable conceptually, but the wording is ambiguous and creates the possibility for misinterpretation. Suggested language is provided in letter dated 9/18/15.
- Section 9.8(2)(c)(6)(d)(3) is also acceptable conceptually, but the wording is ambiguous and creates the possibility for misinterpretation. Suggest qualifiers to the language to clearly identify the instances where reimbursement recovery can be sought. Suggested provided in letter dated 9/18/15

Title Guaranty Division Board Meeting Minutes

June 3, 2008

Board Members Present:

Deborah Petersen
Walter Murphy
Mitchell Taylor
Pat Schneider
Surasee Rodari

Staff Members Present:

Loyd Ogle, TGD Director
Matt White, TGD Deputy Director
Becky Petersen, TGD Director of
Field Operations
Linda Berg, TGD Business Development
Director
Susan Mock, TGD Administrative Assistant
Mark Thompson, IFA General Counsel
Ashley Watts, TGD Legal Intern

Others Present:

Bill Blue – Iowa Land Title Association
Bob McCloney – United Land Title Company
Gene Stanbrough – Central Iowa Abstract and Title
Mike Stanbrough – Central Iowa Abstract and Title
Jay D. Stewart – Central Iowa Abstract and Title
Darin O'Brien – Madison County Abstract
Jim Gilliam – Brown Winick Law Firm
Sharon Minger – Grant Wood Area Abstract, Inc. (by phone)

Call to Order

Ms. Deborah Petersen called the June 3, 2008, meeting of the Title Guaranty Board of Directors to order at 10:30 a.m.

Review & Approval of Board Meeting Minutes

The Board discussed the March 25, 2008, meeting minutes.

Motion: On a motion by Mr. Rodari, seconded by Mr. Taylor, the Board unanimously approved the March 25, 2008, Board meeting minutes.

Review of Financial Reports and Transfer of Funds to IFA's Housing Programs

Mr. Ogle delivered the financial report. TGD has \$213,000 to transfer to IFA's housing programs, based on financials from February and March. It does not include April's or May's financials.

Mr. Ogle said they were tracking down slightly a few percentage points less than what they were doing last year, given the current market. However, TGD has not captured back more market share, which must happen if TGD is going to increase its revenue substantially. TGD is starting to see an increase in the commercial business.

Several Board members posed questions to Mr. Ogle regarding the financial report.

Motion: On a motion by Mr. Taylor, seconded by Ms. Schneider, the Board unanimously approved the financial report and the transfer of \$213,000 to IFA's housing programs.

Director's Report

Mr. Ogle gave the director's report. Regency's closure had an impact on the program. From a claims perspective, it has not been bad. When Regency closed, TGD will probably see some claims activity. TGD will not see a lot of cash claims paid out, but it will see some litigation expenses. People filed blanket mechanic's lien claims on Regency properties, which does cloud title, and it will take some action on TGD's part to clear those titles if that ever became an issue. Mr. Ogle also discussed the issue of mechanic lien coverage further with the Board. He also said homebuilders have agreed to help TGD legislatively to further clarify the mechanic lien law.

Deputy Director's Report

Mr. White delivered the deputy director's report. Mr. White said that claims have been a little more active than normal. There are two claims where people said they were single but they were married and claim they were not single. TGD has not done much for payouts since the last Board meeting. Mr. Murphy asked Mr. White if he ever broke claims down as to claims that came out of title plant searches versus non-title plant searches. Mr. White told Mr. Murphy that he did not have a formal breakdown, but he is going to start to do that.

Mr. White also discussed the Mortgage Release Program. The Program continues to save deals. The one thing that has changed is TGD is now e-filing releases. Releases are being submitted now to the county recorder. Then the recorder takes the money for the filing out of TGD's account. This will eliminate a lot of time and money for cutting checks out of TGD's account.

Business Development Director's Report

Ms. Berg gave the business development director's report. She passed out the latest TGD newsletter. She discussed the Regional Academies they recently had. Ms. Berg noted the builder issue Mr. Ogle discussed, and she said it was a great opportunity for TGD to get in front of some of the real estate agents and lenders whose attention they have not been able to get in the past. There is a workshop scheduled on September 6 for settlement companies. This is new for TGD. TGD's annual conference is November 8.

Field Operations Director's Report

Ms. Becky Petersen delivered the business development director's report. Field audits were wrapped up in early spring. They audited about 60 attorneys and abstractors and hope to do that many, if not more, next year. They are focusing on training as well. In May they held CAP User Forums regionally around the state and had really great turnout in most locations. Ms. Becky Petersen also noted that most of the audits went well, but some issues came up which were the reason why the CAP Users Forums were developed.

Recommendation on Administrative Rules for Waivers

Mr. Ogle went over the procedure on proposing changes to administrative rules.

Mr. Taylor left the meeting at 11:20 a.m. and returned at 11:21 a.m.

Mr. Ogle said that Mr. O'Brien with Madison County Abstract had submitted a waiver application after the Board packets were mailed out. He told the Board they need to decide whether to hear Mr. O'Brien's application under the old rules at the September meeting or the new rules, possibly in March 2009 if nothing is recommended at this meeting. This is a waiver application to abstract in all 99 counties. Mr. O'Brien said his waiver was written in light of the current rules. If the proposed rule changes are accepted, he will have to table his request because he would no longer qualify because he is not an attorney. Ms. Deborah Petersen said she wanted to get the new rules in place and have all determinations made under the new rules. Mr. Rodari and Mr. Taylor said they had no problem issuing Mr. O'Brien's application under the old rules. Ms. Deborah Petersen asked the Board if they wanted to continue looking at the draft of the administrative rules or if they wanted to go forward in the agenda and deal with the two waiver requests that were listed after the rules.

Motion: On a motion by Mr. Murphy, seconded by Mr. Taylor, the Board unanimously approved amending the agenda to move up items 8 (Request for Extension of Provisional Waiver for Grant Wood Area Abstract, Inc.) and 9 (Request for New Provisional Waiver for Central Iowa Abstract and Title) of the agenda, and consider them before they work on item 7 (Recommendation on Administrative Rules for Waivers) of the agenda.

Request for Extension of Provisional Waiver for Grant Wood Area Abstract, Inc.

Mr. Ogle explained that this was Ms. Minger's waiver the Board approved last June. Mr. Ogle asked Mr. White to check on Ms. Minger's progress on her plant. Mr. White said he visited Ms. Minger and her staff. There is a partial plant, and she had an idea as to how long it would take to complete the plant. Mr. White felt Ms. Minger was close to completing her plant. Mr. Ogle said staff recommendation is to grant extension of the waiver until the September Board meeting instead of the four weeks originally requested by Ms. Minger.

Motion: On a motion by Mr. Taylor, seconded by Mr. Rodari, the Board unanimously approved extending the provisional waiver for Grant Wood Area Abstract, Inc. until the Board meeting in September instead of the four weeks Ms. Minger requested.

Request for New Provisional Waiver for Central Iowa Abstract and Title

Mr. Gene Stanbrough spoke on his application for provisional waiver. They are in the process of building a title plant in Dallas County. They are transferring the information to a computerized system. They do not believe they can complete the title plant within one year, even with the technology and staff. Mr. Blue has been helpful from the technology standpoint, and there have been discussions that it may make business sense to combine Polk and Dallas Counties under the image of American Abstract. On a question

from Mr. Murphy, Mr. Gene Stanbrough said he thought it would take a year and a half to complete the plant. Mr. Gene Stanbrough noted that the county recorder told him that they have a lot of records that are not duplicated and at risk. The agreement CIAT made with the county recorder is that in exchange for the recorder's cooperation with CIAT in allowing them to have the records, CIAT will provide the recorder's office with a copy of the information they want from CIAT so they do have a backup.

The Board discussed the possibility of granting CIAT a provisional waiver for two years instead of one year. Ms. Deborah Petersen said TGD's history is that they grant one-year waivers. She would like to grant them a one-year waiver, and then when they come back for the extension, Mr. White can go out and report back on their progress.

Mr. Ogle wanted the record to reflect that the applicant met the two-pronged test of public interest in granting a waiver and to not do so would create a hardship on the applicant. Part of the motion should be that if the applicant shows substantial progress between now and the one-year date, that the Board would anticipate granting an extension.

Motion: On a motion by Ms. Schneider, seconded by Mr. Taylor, the Board unanimously approved granting the provisional waiver for Central Iowa Abstract and Title, with the anticipation of granting an extension if they were making substantial progress.

The Board broke for lunch at noon and reconvened at 12:14 p.m.

Recommendation on Administrative Rules for Waivers

The Board returned to the proposed waiver rules.

Ms. Deborah Petersen presented her comments on the rules first. She incorporated several of Mr. Murphy's comments in her comments. One of the comments in paragraph 9.7(1) was changing the order of one of the sentences to read "high quality of title guaranties..., rapid service, and a competitive price." She said Mr. Murphy was concerned that the priorities were in reverse in the draft that was sent to Board members. In paragraph 9.7(2) she changed "privation" to "deprivation" and "financial cost exceeding income" to "long term adverse financial impact." She also defined the term "interested person."

Mr. Taylor left the meeting at 12:20 p.m. and returned at 12:21 p.m.

Mr. Ogle and the Board discussed who should be noticed regarding waivers and how best to notice them.

In 9.7(8)(b)(4)(a)(i), Ms. Deborah Petersen added "has a close working relationship, or" because there are independent attorneys who work with more experienced abstracting attorneys.

Ms. Deborah Petersen changed "has the discretion to" to "shall" in paragraph 9.7(10)(b).

Ms. Deborah Petersen added a note to the end of her draft saying that she was not in favor of changing the rules to make it possible for the TGD Director to approve a waiver without a vote by the Division Board.

Mr. Taylor presented his comments next. In paragraph 9.6(3), he added a paragraph stating that no waived, grandfathered, or title planted abstractor shall be affiliated with an entity selling title insurance, and if there is evidence of an affiliation, the director has the authority to terminate their participating abstractor status. He said it would be a departure of what the Board has done before. Ms. Deborah Petersen thought it would eliminate a lot of people. Mr. Ogle noted that First American owns three or four plants. Mr. Ogle said he wished the program would have been set up at the beginning that prohibited that type of ownership structure, but he does not know how that can be undone. Mr. Taylor said a covenant-not-to-compete concept is what he was proposing. Ms. Deborah Petersen wondered if TGD adopted the provision, whether TGD's participating abstractors involved in such relationships would drop TGD and focus on title insurance. The Board continued discussing the matter further and ultimately decided not to pursue it further.

Mr. Taylor added language to 9.7(1) stating that the legal standard is the public record and that the filing and indexing of an instrument by the county recorder shall constitute constructive notice. The Board discussed the language further. Mr. Ogle clarified that this was a mission statement, a general statement about TGD's attitude toward plants versus other search methods. It is less a specific issue on how TGD handles things other than a general statement of the sentiment of the Board on that point.

In 9.7(2), Mr. Taylor defined the terms "exempt attorney-abstractor," "grandfathered attorney," and "waived attorney." Mr. Taylor queried whether the way the section was written, it was to say that the exempt attorney and the grandfathered attorney are the same. Mr. White replied that they always were one and the same, but this defined it by rule.

Mr. Taylor noted that he wanted the definition of "hardship" to be the same definition used in the Hendricks waiver decision. Mr. Murphy disagreed with using that definition. Ms. Petersen recommended that the Board use her definition of "hardship," but add Mr. Taylor's language saying that financial hardship alone may constitute a hardship.

In 9.7(8)(b)(4)(a)(i), after much discussion, the Board decided not to use Mr. Taylor's language of "and shall grant a waiver" and instead went with Ms. Deborah Petersen's verbiage.

The Board also discussed language in 9.7(10)(b) regarding when TGD's director has the discretion to grant a waiver.

Mr. Rodari left the meeting at 12:49 p.m.

Ms. Schneider left the meeting at 1:23 p.m. and returned at 1:25 p.m.

The Board took a break at 1:33 p.m. and reconvened at 1:40 p.m.

The Board continued discussion of the proposed rules, with Mr. Murphy's suggested changes. The Board worked on language Mr. Murphy had developed regarding participation in the Standards of Excellence Program noted in paragraph 9.7(2).

Mr. Taylor left the meeting at 2:06 p.m. and returned at 2:12 p.m.

Mr. Murphy's draft deleted several examples of public interest in the definition of "public interest" in paragraph 9.7(2). Mr. Murphy explained why he deleted those examples. The Board discussed the deletion further, and the rest of the Board agreed to leave in those examples.

The Board also discussed Mr. Murphy's changes in 9.7(8)(4)(b) regarding permanent waivers for attorneys who want to abstract and ultimately decided to keep the verbiage regarding attorney applicants not working under the supervision of an exempt attorney abstractor in that section.

The Board discussed the verbiage Mr. Murphy added to 9.7(11) regarding the board minutes of each waiver hearing.

The Board examined a draft based on written comments from Professor Bauer and Tim Reilly, an abstractor in Black Hawk County regarding the concern of treating attorneys who apply for waivers differently from the way abstractors are treated. This would create a third option, a permanent waiver for non-attorneys who wish to be limited either geographically or by transaction.

Mr. Blue addressed the Board regarding the proposed rules and made some suggestions to incorporate in them.

Next Meeting Date and Time

A special Board meeting to finalize the waiver rules will be July 10, 2008, at 10:30 a.m. The next regular Board meetings will be September 9, 2008; and December 2, 2008; all at 10:30 a.m.

Adjournment

Motion: On a motion by Mr. Taylor, seconded by Ms. Schneider, the Board unanimously voted to adjourn at 3:20 p.m.

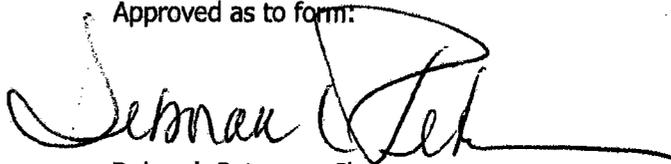
Dated this October 7, 2008,

Respectively submitted:



Loyd W. Ogle, Director
Title Guaranty Division

Approved as to form:



Deborah Petersen, Chair
Title Guaranty Division



Tel: 319-291-4000 614 Sycamore Street
Fax: 319-291-3929 Waterloo, Iowa 50703-4726
www.blackhawkabstract.com

April 25, 2008

Loyd Ogle, Director
Title Guaranty
Iowa Finance Authority
2015 Grand Avenue
Des Moines, Iowa 50312

Re: proposed administrative rule change(s) re title plant waivers

To: Loyd Ogle

Black Hawk County Abstract & Title (BHCA&T) is submitting this comment on proposed administrative rule change of Chapt. 9 as it relates to title plant waivers. BHCA&T feels there should be provision for a permanent waiver that would be available to current traditional title plant abstractors for county(ies) other than that in which it maintains a current title plant. This additional permanent waiver could be both product/service(s) and geographically specific (i.e.: adjacent XYZ county(ies) for TG900/901 purposes only).

More and more BHCA&T has been finding itself at a competitive disadvantage by not being able to offer title related services to its lender clients in counties other than its home county (i.e.: Black Hawk). Over the past few years BHCA&T has experienced an increase in inquiries from lenders, realtors and lawyers about providing title services in these other counties. These inquiries for the most part are based upon service issues.

If there were a provision for such a waiver BHCA&T would be interested in obtaining one for counties in its immediate vicinity. BHCA&T feels that with its experienced and seasoned staff, it could perform such title evidencing in a complete and accurate manner.

Sincerely

A handwritten signature in black ink, appearing to read "Timothy R. Reilly", is written over a printed name and title.

Timothy R. Reilly, President
Black Hawk County Abstract & Title

IFR-04/25/08 09:30:21

White, Matt [IFA]

From: Ogle, Loyd [IFA]
Sent: Wednesday, April 09, 2008 2:05 PM
To: 'Bauer, Patrick B'
Cc: White, Matt [IFA]; Petersen, Becky [IFA]; Wilson, Joanna [IFA]
Subject: RE: ISBA Real Estate Section Council -- RE: Title Guaranty --Discussion draft of Iowa Administrative Code amendments regarding abstract title plant waivers

-----Original Message-----

From: Bauer, Patrick B [mailto:patrick-bauer@uiowa.edu]
Sent: Tuesday, April 08, 2008 5:50 PM
To: Ogle, Loyd [IFA]
Subject: RE: ISBA Real Estate Section Council -- RE: Title Guaranty --Discussion draft of Iowa Administrative Code amendments regarding abstract title plant waivers

Dear Loyd,

Thanks for affording me an opportunity for review and comment. The draft addresses some of the process concerns we discussed back in January, and certainly helps to fill out considerably both structure and content of the waiver process.

Initially, a few technical points. First, shouldn't the citation in the last sentence to 9.7(1) be to 16.91(5) (and not 16.3(15))?

Second, 9.7(12)'s provision about withdrawal/cancellation/modification of a waiver where "the alternative search method assuring that the public interest will be adequately protected [after issuance of the ruling] has been demonstrated to be insufficient" (is bracketed qualification is needed?) doesn't seem to be paired with/to any bracketing "front end" requirement about determining the sufficiency of a proposed alternative search method at the time of the initial waiver.

Third, throughout there are varying references to abstractors, attorneys, and applicants -- in view of the substantive distinctions being made (discussed below), would it make sense that "applicant" includes both "attorneys" and "abstractors" but the latter two terms are used in ways that are always mutually exclusive?

In terms of substance, the draft appears to create three categories:

- (1) abstractors (non-attorneys) can get provisional waivers but eventually have to create a plant
- (2) attorneys (non-abstractors) can get permanent waivers if they have (seemingly prior) experience abstracting under the supervision of exempted/grandparented attorneys (i.e., presumably the requirement of supervision ceases once the waiver is granted?)
- (3) attorneys (non-abstractors) unable to abstract under the supervision of an exempted/grandparented attorney can get a permanent waiver if they can satisfy the remaining requirements set forth in 9.7(8)(b)(4)(a)(i)-(vi).

I imagine the first category is relatively uncontroversial and the second category may involve a somewhat limited extension of Berger-type effects from exempted/grandparented attorneys to permanently waived/grandchildren attorneys who are able to satisfy the "apprenticeship" requirement.

The "no geographical limitation" provision of 9.7(8)(b)(4), however, seemingly allows 99-county "omnibus" abstracting by attorneys awarded permanent waivers within the third category.

I think I follow the logic of both 9.7(8)(b)(4)(a)(i)-(iii) (going to the quality of the abstracting the attorney will perform) and 9.7(8)(b)(4)(a)(iv)-(v) (seemingly going to the quantity of business the attorney will bring to Title Guaranty), but see some difficulties in applying the provisions of 9.7(8)(b)(4)(a)(vi) in the circumstances where permanently-waived non-abstractor attorneys can operate on an omnibus basis in all 99 counties but the title plant requirement usually confines non-attorney abstractors to operating in a single county. Such differences in scope of operations seemingly will present apple/orange problems in determining both "[t]he 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" because those comparisons presumably will produce different results in different counties.

I can see the sense of letting attorneys compete with abstractors in counties where the latter aren't performing adequately, and also can see the sense of allowing omnibus abstracting in all 99 counties where market conditions require it. I continue to be somewhat unclear, however, why the latter circumstance (need for omnibus abstracting in all 99 counties) justifies allowing non-abstractor attorneys to abstract without a title plant but is not sufficient to allow non-attorney abstractors to do the same thing. Admittedly maybe a matter of policy appropriately determined by TGD, but on its face there's a sort of cross-connection/short circuiting between the categories of non-attorney abstractor/non-abstractor attorney and uni-county title plants/all-county record searching.

I realize things above aren't as clearly expressed as they should be, but would be happy to try to develop them more fully by phone if that would be helpful. Thanks again for sending the draft my way.

Best regards,

Pat

**Iowa Title Guaranty
Public Comment Hearing
September 22, 2015**

Staff Members Present:

Tara Lawrence, Iowa Title Guaranty Director
Mark Thompson, General Council

Others Present:

Ted Huggins, Abstract Associates of Iowa, Inc.
Dean Hoag Jr., Statewide, Peoples Abstract
Jonathan Lewis, Title Services DM Corp.
Gary Reeder, ILTA, President Delaware County Abstract Company
Sara Cockerham, Abstract & Title Service of Story County
Matt White, Title Services DM Corp.

Call to Order

Mr. Thompson called the Public Hearing to order at 1:05 p.m.

Mr. Thompson explained the purpose of the public comment hearing. He alerted the audience that Iowa Land Title Association filed a request for a Regulatory Analysis. Mr. Thompson explained, under the Iowa Administrative Procedures Act section 17 A.4a, Iowa Title Guaranty is required to prepare an analysis and publish a summary in the bulletin, in addition, this will extend the public comment period. The process will be resumed at a future date based on the publication of the Summary. Mr. Thompson opened the floor to public comments.

Public Comments

Mr. Reeder, who is the President of Delaware County Abstract Company and Representing ILTA, spoke of concern about waivers and title plant requirements. ILTA has been supportive of provisional title plant waivers which are granted to allow time for a title plant to be built, however, ILTA has opposed all permanent title plant waivers. Mr. Reeder expressed concern with the rules related to the waiver process and how it has changed. Mr. Reeder expressed concern about the definition of participating abstractor and with the inspection of title plants. Mr. Reeder believes the language concerning title plant inspections should be changed from “may” to “shall”. Mr. Reeder indicated the rule fails to adequately define hardship or public interest. Mr. Reeder indicated both ILTA and himself have previously submitted public comments in writing.

Mr. Huggins, co-owner of Abstract Associates of Iowa, Inc., operating in three counties, Webster, Calhoun and Wright, are beneficiaries of a provisional title plant waiver. Mr. Huggins expressed his opinion that the title plant helps abstractors and adds quality to the products prepared. Mr. Huggins also expressed concern over the proposed change in the definition of an abstractor. Mr. Huggins also expressed his concern that the definitions of hardship and public interest do not add to the quality of the process. Mr. Huggins indicated he previously submitted public comments in writing.

Comments from Dean Hoag, owner of 10 abstract companies in the state of Iowa and a waived attorney: Thanked everyone for the rewrite; appreciates the work done, and specifically for the expanded definition of person and the definition of a participating abstractor. As an abstractor owner of ten companies, the expanded definition takes away the concern and the question what a participating abstractor is. It now includes Mr. Hoag as a personal waived attorney but it also includes the companies themselves, so that’s a big benefit for the new rules and the new definitions. He went on to provide a few other suggestions with regards to the rules:

- 265-9.1 Definitions: add language to the definition of abstract, to include report of title, such as those that have been allowed in Pottawattamie County and Linn County due to the floods; the report of title does not fit into the regular definition of abstracts.

- 265-9.6(5) Liability Insurance: add the qualifier, Professional, in front of the liability insurance moniker; this would better dictate and describe what type of liability insurance you are looking at. As we know in the industry there is general commercial liability insurance and professional liability insurance. I believe you are seeking professional liability insurance.
- 265-9.6(6) Agent relationship: In the third line, there is the term “oral” instructions. Request deletion of the term “oral” out of this rule. In the abstracting business, if it isn’t written it’s not there, if it’s not documented it’s not present, therefore, “oral” should be removed.
- 265-9.6(12) Compliance: Suggest an additional sentence at the very end of the paragraph, “All costs incurred by the division, will be borne by the division.” When the compliance section talks audits, such as the inspection of a title plant that Gary Reeder commented that the “may” should be replaced with “shall”, if Title Guaranty as underwriters to come in to inspect title plants, the cost to do so should be borne by Title Guaranty and not by the title plant owners.
- 265-9.7(1) (a) Title Plant: In defining title plants, suggest language to include not only the indices but also copies of all instruments referenced in such tracked indices.
- 295-9.7(1)d.(5) Criteria for Title Plant Waiver: With respect to the hardship and public interest definitions, the Supreme Court has defined the statute and the meaning of hardship and public interest. Do not believe it’s in Iowa Title Guaranty’s, the participating abstractors’, the participating closers’, or the participating attorneys’ best interests to initiate or endorse a legislative resolution to this issue. I believe the unintended consequence to such legislative resolution would be more harmful and more harmful to the Iowa Land Title system.

Mr. Thompson asked for any additional public comments, hearing none, Mr. Thompson adjourned the public comment hearing.

Adjournment

Mr. Thompson adjourned the meeting at 1:35 p.m.

From: Arlene Drennan [mailto:arlene@cassabstract.com]
Sent: Thursday, December 10, 2015 9:37 AM
To: Lawrence, Tara [IFA]
Subject: Public Comment for December 15, 2015, Hearing

Dear Tara,

My concerns are great concerning the proposed changes to Title Guaranty's Administrative Rules. I believe the unmatched quality and reliability of the abstract system will be undermined and eventually destroyed by the proposed rules.

Title Guaranty's purpose was and still is to "initiate and operate a program in which the division shall offer guaranties of real property titles in this state". The proposed rules are overreaching and only seek to eliminate the excellent system we have in Iowa.

The Title Guaranty Program was established "to improve the quality of the land-title system ...by adding to the integrity of the ... program. Eliminating the requirement of a title plant and granting waivers is the exact opposite of that purpose. There is no reason that Title Guaranty cannot continue to function as is and as was intended by the originators of the legislation in conjunction with the title plant system. Iowa should stand tall and proud of its system because we can maintain our high quality of title work in conjunction with certificates that make the mortgages marketable on the secondary market. Public interest is best served, and well served, through the title plant system.

I find Title Guaranty's "new vision" of driving down prices of abstracts making Iowa's abstract-attorney title opinion system more cost efficient, as an interference with free trade. I do not believe Title Guaranty should be involved in regulating abstracting costs. Our free trade system does an excellent job of doing just that. This "new vision" is a blatant act of regulating free trade and should be stopped.

The Board's view of hardship seems to be an avoidance of the problem. As a government board, they can define hardship and must realize that start-up costs of any business are not a hardship – they are the cost of doing business. If the business entity creating a title plant has not planned for start-up costs, that is quite simply, their problem. Being profitable is the goal of any business and building a title plant should be weighed in on the business plan.

I would ask that the Board send the proposed rules back to the drawing board and work with all industry related associations/groups to form rules that carry out the intent of the Title Guaranty Program when formed.

Thank you.

Arlene

Arlene L. Drennan

Manager

Regional Vice-President, Iowa Land Title Association

Certified Land Title Professional, ILTA
Cass County Abstract Co., Inc.



Iowa Land Title Association

P.O. Box 444 • Carroll, IA 51401 • 800.778.3789 • ILTA@austin.rr.com

December 14, 2015

By Delivery and E-Mail to tara.lawrence@iowa.gov

Tara Lawrence
Iowa Title Guaranty
2015 Grand Ave.
Des Moines, IA 50312.

RE: Comments on ARC 2128C Regulatory Analysis and Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code

Dear Ms. Lawrence:

I am writing to you on behalf of the board of directors of the Iowa Land Title Association, which represents 140 members. The purpose of this letter is to comment upon the Regulatory Analysis for the proposed amendments to Title 265, Chapter 9, Iowa Administrative Code.

The Iowa Land Title Association (ILTA) has the following specific comments and issues with the proposed rules:

1. Iowa Title Guaranty (ITG) is technically correct that the *absolute barest minimum* regulatory analysis required of the agency is to answer the five statutorily mandated questions in section 17A.4A(2)(b), Code of Iowa (2015). There is nothing in the statute limiting the scope of a regulatory analysis to the five statutory questions. It is disappointing that an agency that is designed to work hand-in-glove with 193 abstractors, 99 percent of whom are small businesses, would not take a more candid look at how the rule changes will affect those small businesses. If the request for a regulatory analysis appears at cross-purposes with the proposals of ILTA, it should at least be recognized that ILTA would have hoped that the regulatory analysis would have taken a broader view of the effect of the rules on abstracting businesses rather than narrowly concentrating on justifying its proposal and limiting its review to the narrowest possible analysis.

2. ILTA believes that ITG is misreading and misinterpreting the Hendricks decision. We note that the regulatory analysis admits, "The terms 'hardship' and 'public interest' were not defined in the Title Guaranty program rules until after the Hendricks litigation was underway." (p. 843.) Then ITG argues that "the definitions of those terms were expressly addressed by the Iowa Supreme Court" (p. 844) and, "The Iowa Supreme Court has already ruled that the definitions of 'hardship' and 'public interest' set forth in the noticed rules are correct." (p. 850) The regulatory analysis completely misses the point: (a) that there literally were *no definitions in place* (as admitted) to interpret; (b) that the Court reviewed an ad hoc determination and agreed it fit within common definitions; (c) that there was literally no record of agency action available on appeal for the Supreme Court to weigh. The existing rule was adopted after the ruling, basically parroting the ruling rather than actually providing a definition.
3. Attempting to use Attorney James Gilliam's remarks to ILTA as authority against ILTA's request for an exercise of agency authority is both preposterous and a misreading of the remarks. Clearly, Mr. Gilliam understood that the ITG could define the terms. Mr. Gilliam was saying that because of ITG's failure to exercise its authority, the only other way (without court or agency action) was legislative action. Mr. Gilliam did not say that ITG should not or could not actually define the terms.
4. It is somewhat shocking to have ITG assert that its rules really are not regulatory. While it may all be true that an abstractor need not perform a service or provide a product that qualifies for an Iowa Title Guaranty policy, it is also true that (a) the ITG policy is the only legal method for providing title assurance within the borders; and (b) the ITG regulations form a baseline for services provided across the state; and (c) whether the described niche markets exist or not, because of business necessity, an Iowa abstractor is not free to disregard ITG membership or regulations.
5. Part V, Subpart d, discusses performance standards to replace design or operational standards. The analysis restates part of the overall problem:

The law plainly allows waivers for both attorneys and abstractors. While until recently the ITG Board had considered permanent waiver requests only from attorneys, that fact does not change the fact that the law expressly allows abstractors to apply for a waiver.

(p. 850.) The only statutory requirement is *the possession and use of a title plant* (the design or operational standard). The *use or proposed use of the non-title-plant direct search method* (measurable only by a performance standard) can be reached and employed by the granting of a waiver. ILTA believes that definitions of hardship and public interest essentially allow reaching the performance standard with no qualitative definition or requirements. At least in this case, the removal or lack of regulation is harmful to small business. Even if the regulatory analysis were supposed to reduce the impact of the rules on small business, ILTA believes that it is inappropriate to have an empty definition of hardship or public interest when attempting to establish the only metric for determining whether the design or operational standard should be discarded for a performance standard. ILTA believes that it is inappropriate that there is no measure of past or future performance required by the rule.

6. After analyzing the case law and circumstances, the regulatory analysis concludes, "The Iowa Supreme Court has already ruled that the definitions of 'hardship' and 'public interest' set forth in the noticed rules are correct." (p. 850.) Does this mean that, once blessed by the Supreme Court, nothing ever changes? If the rules are supposed to clarify when and how waivers are granted, ITG utterly fails to exercise authority where it is needed. Again, this is the most minimal rule based on the Supreme Court's adoption of an ad hoc agency ruling, not an actual administrative rule.
7. The regulatory analysis has a troublesome conclusion:

The long-term consequences of the noticed rules should be greater conformance with the Iowa Code provisions dealing with ITG as passed by the legislature. For example, previously the title guaranty rules did not address waiver requests by abstractors even though the Iowa Code has for many years expressly provided that abstractors may be given waivers. The lack of rules in that area likely had an inhibiting effect on abstractors and is likely at least part of the reason why there are no abstractors with permanent waivers at this time.

(p. 850.) ILTA does not disagree that the purpose should be conformance to the statute. The issue here is about HOW to conform to the statute. The statute *requires* a title plant and only *allows discretionary* waivers. The troubling implication is that the rules need to be changed in a way so as to make it easier not to comply with the statutory requirement of a title plant. The suggestion fundamentally misunderstands the reasons for having waiver regulations in the first place. The exercise of discretion requires definitions and actual, qualitative analysis.

Respectfully, ILTA urges the ITG board to revisit these proposed regulations and, particularly, to address the definitions of hardship and public interest.

Sincerely,



Mike McLain, President
Iowa Land Title Association Board of Directors

ABSTRACT & TITLE CO.

ABSTRACTS OF TITLE

Books Established in 1966

Telephone: 641-464-2108 Fax: 641-464-2017

115 S. Fillmore Street

Mount Ayr, Iowa 50854

www.atcoiowa.com

December 15, 2015

Dear Ms. Lawrence,

I'm writing this letter to you to voice my personal concerns of the proposed changes to the Administrative Rules re: Title Plant Waivers.

First off, my family has been involved in the abstracting business for nearly 40 years. We have a combined total of over 60 years of experience. We acknowledge that there have been many changes over the years, but this current proposed change is quite possibly the most troubling change we've seen during that period.

The Iowa statute clearly states that a person preparing abstracts for division (Iowa Title Guaranty) purposes, *must own or lease a 40 year title plant*. It goes on to say that the division may grant a waiver if certain conditions are met, namely hardship and public interest.

We purchased Union County Abstract, Inc. in the mid 1980's, and in 2006 we expanded our business to include Ringgold County. It was clearly a financial hardship to make this expansion. We applied for and received a provisional waiver while we built our title plant. Why did we build a title plant when the statute clearly states we could have applied for a permanent waiver? Because that statute also states that: *title plants are the preferred method of title evidencing*, and we believed in that system. We knew it would be costly, and we were willing to bear that burden.

My main concern is that the division is trying to change the rules, so basically they have no choice but to grant waivers. I acknowledge that the Supreme Court stated in the Hendricks opinion that ITG properly applied the rules as they were written. ITG has stated that if the legislature wanted certain definitions or metrics to prove hardship or public interest, they would have provided those. However, if they wanted title evidencing to be performed without a title plant, why did they say that a person must own or lease a title plant, and that title plants were the preferred method?

I believe the spirit of the law, as it is written now, is that the division may grant a waiver *if* it is needed to serve the public by making title guaranties available statewide. In other words, if there is no attorney or abstractor providing title searches in a particular county, a person could apply for a waiver in that county. If that wasn't the case, why would the legislature mandate that a person must own or lease a title plant? I believe the legislature intended for waivers to only be granted in extreme, or dire situations, and not because someone doesn't want to spend the time and resources needed to build a title plant.

*MEMBER OF AMERICAN AND IOWA LAND TITLE ASSOCIATIONS
IOWA TITLE GUARANTY MEMBER NO. 8657*

Please take some time to reconsider these proposed changes. If these rules go through as written, soon title plants will go by the wayside, and with it, the abstract and attorney title opinion as we know it.

Thanks for your time.

Mike McLain,
Office Manager
Abstract & Title Co.