

# Title Guaranty Division Board Meeting Minutes

December 8, 2009

## Board Members Present:

Deborah Petersen (by phone)  
Pat Schneider  
Mitchell Taylor (by phone)  
Tim Reilly (by phone)  
Surasee Rodari (by phone)

## Staff Members Present:

Loyd Ogle, TGD Director  
Matt White, TGD Deputy Director  
Linda Berg, TGD Director of Business  
Development  
Becky Petersen, TGD Director of  
Field Operations  
Susan Mock, TGD Administrative Assistant

## Others Present:

Bill Blue – American Abstract  
Jerry L. Schurr II – Abstract Associates of Webster County  
Ted Huggins – Abstract Associates of Webster County  
Terri Stewart – Mike Gorseline's office (by phone)  
Mike Gorseline (by phone)  
John Eisenman – ILTA (by phone)

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## Call to Order

Ms. Pat Schneider called the December 8, 2009, meeting of the Title Guaranty Board of Directors to order at 10:36 a.m. Mr. Ogle stated that per the Iowa Code, the Board meeting is being held electronically due to adverse weather conditions.

## Review & Approval of Board Meeting Minutes

The Board discussed the September 1, 2009, meeting minutes.

Mr. Taylor called into the meeting at 10:40 a.m.

Motion: On a motion by Mr. Reilly, seconded by Ms. Deborah Petersen, the Board unanimously approved the September 1, 2009, Board meeting minutes.

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

Mr. Ogle delivered the financial report. The past quarter was a record quarter for TGD. Revenue is up substantially. Volume and revenue was only surpassed once, in 2003, with the refinance boom at that time. TGD continues to land new lenders to the program. TGD's market share in the past year has been rising dramatically as well. As of June 30, TGD's market share with purchase transactions was 65 percent.

The Board discussed the financial report further.

Mr. Rodari called into the meeting at 10:45 a.m.

Motion: On a motion by Ms. Deborah Petersen, seconded by Mr. Rodari, the Board unanimously approved the financial reports.

Mr. Ogle said that there is \$742,000 available to transfer to the housing programs.

Motion: On a motion by Mr. Rodari, seconded by Ms. Deborah Petersen, the Board unanimously approved the transfer of \$742,000 to IFA's housing programs.

### **Director's Report**

Mr. Ogle gave the director's report. TGD has been working on an abstractor inspection and compliance program. A concern is not only the inspection of the plant but an inspection of the product being produced. New alignments and relationships have developed in the state, and staff is determining how to address those. There are new models where various parts of the title work are being contracted. It raises questions about the supervision and quality of work. Staff decided to focus on the quality of the search product. There are liability issues in terms of whether these relationships comply with the statute, rules, and contracts with participating members. Currently TGD does not have the capacity to launch an abstractor inspection and compliance program and will not until more staff is hired. The ILTA formally approved the draft of the abstractor inspection and compliance program. TGD will take the draft to the real estate section of the Bar Association for their approval too.

The Board discussed the draft and the program further.

Motion: On a motion by Mr. Taylor, seconded by Mr. Rodari, the Board unanimously approved the abstractor inspection and compliance program draft as a working document.

Mr. Ogle discussed closing protection letter coverage for owners. There has been discussion as to whether owners should be automatically given closing protection letter coverage. Currently, owners have that coverage, but it is an area where claims will increase. Mr. Ogle thought that it could be possible to have owners sign a document agreeing to closing protection letter coverage in the same way they sign the Composite Mortgage Affidavit to receive an owner's certificate currently.

Mr. White discussed how closing protection letter coverage works from a claims and underwriting perspective and how the industry handles this issue.

Ms. Becky Petersen spoke about closing protection letter coverage from a consumer protection argument.

The Board discussed the matter further.

Mr. Ogle discussed abstractor report enhancements. ILTA discussed with TGD the possibility of TGD helping to share the cost of some enhancement to the ICIS system.

TGD would be making a contribution to a third party to enhance a system that would be a benefit to participating members.

The Board discussed this further. Mr. Eisenman explained that the enhancement would be to abstractor ports currently being provided by ICIS. It would involve tweaking the reports maintained.

Motion: On a motion by Mr. Rodari, seconded by Ms. Deborah Petersen, the Board denied helping ILTA split the cost of the ICIS enhancements. The question was called, with the following votes to deny: Ms. Deborah Petersen, aye; Mr. Taylor, aye; Mr. Rodari, aye; Mr. Reilly, aye; Ms. Schneider, aye.

Mr. Ogle delivered the legislative report. Although TGD has not introduced any bills this year, it is involved in five bills. One would overhaul mechanic's lien legislation. The Iowa banking superintendent will introduce a bill to regulate closing companies. ILTA will introduce a bill to deal with issues with CLARIS and public access to records. It is anticipated that ILTA will introduce a bill to license abstractors. The Iowa Bar Association may introduce a bill that will clarify that on a purchase money mortgage transaction, a spouse's signature is not needed.

### **Deputy Director's Report**

Mr. White gave the Deputy Director's Report. Claims have been fairly active recently. TGD is seeing more marital status claims. TGD is currently litigating three of those claims, and a couple more have not yet needed to be litigated because they have gone through the foreclosure process without objection.

TGD has gotten 16 new claims since the start of the fiscal year. Many deal with prior judgment liens, prior mortgages, marital status, and mechanic's lien claims. TGD has satisfied 10 claims in that same time period.

Mr. White discussed the marital status affidavit. TGD wants a document where the marital status is not hidden in a mortgage, but it is the only thing on that document. The goal is to obtain something from the borrowers, in their own handwriting, stating their marital status, and notarized, that TGD can take to court in marital status claims cases. Mr. Ogle noted that they want to run the affidavit by the industry and bring it back to the Board in the spring for approval.

Mr. White also discussed the Mortgage Release Program. As of the first of the month, TGD has started to charge \$30 to process the application. That is in those situations where the Rapid Certificate is not involved.

### **Business Development Director's Report**

Ms. Berg delivered the Business Development Director's Report. Year to date, refinances are 50 percent of TGD's transactions and revenue. On the November transaction report, it is starting to lessen a bit. As far as certificate percentage, refinances are about 40 percent of the business for November and 38 percent of the revenue. Commitment volume is strong. Ms. Berg is anticipating that TGD will have several more good months, and then the spring market will hit.

### **Field Operations Director's Report**

Ms. Becky Petersen gave the Business Development Director's Report. With regard to training and compliance, staff continues to stay busy with training. Field audits have been suspended because of her involvement in the Commercial Department. TGD staff is working on tax credit transactions, which tend to be labor-intensive. Staff will still do a few audits. However, staff will focus on high-volume closing protection letter users, and staff will also make every effort to hit the new independent closing companies that have come on board and any new users within the last year. Last year, staff did over 65 field audits. This year, they may only do a dozen.

Ms. Becky Petersen told the Board that she requires whomever she is auditing to pull six files. She reviews those files and determines whether commitments and certificates are being issued in accordance with TGD's underwriting guidelines. She also looks at the closing itself, such as the HUD statement, IOLTA accounts, and so forth.

The Board discussed model title opinions.

### **Approval of Manual Change for Closing Protection Letter**

Mr. Ogle discussed the Manual change for the Closing Protection Letter. Any time a Closing Protection Letter is issued, TGD is on the hook, whether or not a Gap Coverage Endorsement has been issued. The change to be made is that any time a Closing Protection Letter is issued, the lender would automatically receive Gap Coverage. Mr. White said terminology has changed a bit. A Gap rider would be issued with Closing Protection Letters, while the Gap Endorsement would be issued for non-Closing Protection Letter transactions. That would require that documents be filed in 10 days. In Closing Protection Letter transactions, TGD covers the documents whenever they get covered.

Motion: On a motion by Mr. Taylor, seconded by Mr. Reilly, the Board unanimously approved the Manual change for the Closing Protection Letter.

### **Recommendation to Adopt Rules in Final Form**

In regard to the Manual, Mr. Ogle said the rules recommended by the TGD Board have been noticed by the IFA Board. The official notice period and public comment period have passed, and there were no public comments. It is a change in what requires Board approval, and staff wanted to break out items in the Manual that the Board approves and make it part of a staff supplement that staff can update without Board approval. The Manual will contain all contracts requiring Board approval. If the Board recommends adoption of the rules in final form, then the rules would go to the IFA Board for approval.

Motion: On a motion by Mr. Taylor, seconded by Ms. Deborah Petersen, the Board unanimously approved the rules in final form.

**Approval for Provisional Waiver  
Abstract Associates of Webster County, Inc.**

Mr. Ogle said that TGD timely received an application for a waiver under Title Guaranty statute of the requirement of the 40-year title plant. This is for a provisional waiver, meaning the applicants intend to build a plant. Under the rules, there is a required written recommendation from the director. After the application came in, Mr. Ogle and one of the law clerks, Ms. Ashley Watts, traveled to Fort Dodge to meet and discuss the application with staff there. Staff recommendation is for the Board to approve the waiver. It would provide a second plant abstractor in Webster County.

Mr. Schurr and Mr. Huggins introduced themselves. Mr. Schurr said they opened their office on September 21. For the last 13 years, there has only been one abstractor in Webster County. The response after they opened has been positive. The one hurdle is getting the records from the recorder. They are in the process of negotiating with the recorder for releasing index records. They are still negotiating for the electronic records themselves. Not having the Title Guaranty number has affected their ability to do abstracts in Webster County. They do not have the share of the market, and feedback tells them it is because they are not a Title Guaranty abstractor. Mr. Huggins said he believes they can grow the Title Guaranty program in their market with their new company. The provisional waiver will allow them to provide services and Title Guaranty to their market. They are faced with the expenses of a start-up business, and the waiver will help them with that.

Staff and Board members queried Mr. Schurr and Mr. Huggins about their waiver request.

Mr. Ogle opened the meeting to public comment on the waiver request. Mr. Eisenman said the ILTA is not in opposition to the waiver request.

Motion: On a motion by Ms. Deborah Petersen, seconded by Mr. Reilly, the Board unanimously voted to close public comment on the waiver request.

The Board continued discussing the waiver request. Mr. Ogle requested that his written recommendation be entered into the record. Under the rules, this waiver meets the requirements of being in the public interest and that denying a waiver creates a hardship on the abstractor.

Motion: On a motion by Ms. Deborah Petersen, seconded by Mr. Reilly, the Board voted 4-1 to approve the waiver request for Abstract Associates of Webster County, Inc., with one abstention, by voice vote: Ms. Deborah Petersen, aye; Mr. Reilly, aye; Mr. Rodari, aye; Mr. Taylor, abstain; Ms. Schneider, aye.

**Miscellaneous**

Mr. Eisenman wrote a letter on behalf of the ILTA. The position of the ILTA is that abstracting done to obtain a Title Guaranty commitment or certificate is supposed to be done by participating abstractors or by waived or grandfathered attorneys. Mr. Eisenman said that with the business model with the Credit Bureau of Muscatine and Mr. Gorseline, that is not happening. The ILTA has concerns about this model.

Mr. Ogle said it was unusual for the ILTA to come to the Board and recommend that TGD stop accepting commitments or certificates from a participating member. There are new business relationships that TGD tries to stay on top of. TGD is uncomfortable with the precedent that a third party could come before the Board and tell them to deny someone's ability to participate in the program. If TGD is going to deny a participating member's right to participate in the program, it would be revoking the member's license. Procedural due process would be put in place, requiring a contested case proceeding. He also is hesitant to discuss publicly the specifics of any one participating member's contractual relationships with other parties.

The Board and Mr. Ogle discussed the matter further.

### **Next Meeting Date and Time**

The next Board meeting is tentatively set for Tuesday, March 2, 2010, at 10:30 a.m.

### **Adjournment**

Motion: The meeting adjourned at 12:30 p.m.

Dated this March 2, 2010,

Respectfully submitted:

Approved as to form:

Loyd W. Ogle, Director  
Title Guaranty Division

Pat Schneider, Vice-Chair  
Title Guaranty Division