

Title Guaranty Division Board Packet for Telephonic Board Meeting July 10, 2007

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Procedure for Using the Title Guaranty Report of Title

The applicant may request a Report of Title from a participating abstractor in lieu of a traditional abstract for residential transactions only in Pottawattamie County. The coverage amount must be less than \$500,000.00. The search should be ordered as close to the closing as practical. When the Title Guaranty Report of Title is completed, it must be examined by a participating attorney who will prepare a preliminary title opinion and/or Commitment for closing. After closing, the participating abstractor updates the search using Title Guaranty's Report of Title-Post Closing Search form. The Post Closing Search is delivered to a participating attorney who will prepare a final title opinion and/or Certificate.

The participating attorney must disclose in his/her title opinion whether a full abstract of title or a Report of Title is the basis for his/her title opinion.

The applicant for Title Guaranty will provide the Division the information and documents required to issue the Certificate as set forth under Article II of this Manual. All Title Guaranty programs, including the gap endorsement and Rapid Certificate are available when Reports of Title are used

The participating attorney will retain copies of completed Reports of Title in his/her title file for a period of ten years after the effective date of the certificate for the Division's review, pursuant to "Title Guaranty Division," Iowa Administrative Code Chapter 9.6(2)(g). Likewise, pursuant to "Title Guaranty Division," Iowa Administrative Code Chapter 9.6(4)(b), the participating abstractor shall retain a written or electronic copy of each Report of Title prepared for a Title Guaranty Certificate which shall be available to the Division upon request.

Instructions for Preparation of Title Guaranty Report of Title

Title Guaranty Reports of Title must contain the following information:

A. A complete legal description, correct address (street name and city or town) for said legal description, and county. Abbreviated descriptions are not acceptable.

B. The property search must commence with the root of title. All matters of record prior to the recording date of the root of title are omitted, except (1) plats and surveys, (2) easements, (3) party wall and other boundary line agreements, and (4) unexpired recorded leases.

C. The instrument vesting title in the current titleholder must be shown. The most recent full value deed and all conveyances thereafter must be disclosed, but prior questionable or explanatory conveyances should also be disclosed. When listing the deeds, the search should list the names exactly as they are listed in the deed and the recording information.

D. If title proceedings are pending, the action, parties and minutes should be described or copies thereof included with the search that shall be in compliance with the Abstracting Standards of the Iowa Land Title Association.

E. Unreleased mortgages and assignments, easements, restrictions, and all other matters of record affecting title must be shown.

F. Instruments reported must identify the document, the parties, recording information and appurtenant facts or copies thereof included with the search.

G. 10 year name searches must be conducted for every titleholder found in the property search required in paragraph B above.

H. Real estate taxes and special assessments must be searched.

I. After closing and the recording of the mortgage, the participating abstractor will prepare a Report of Title - Post Closing Search covering this recording. Any changes in the title record since the original search report must be disclosed in the Post Closing Search. Releases and other clearance documents recorded after the mortgage to be guaranteed may be shown by addendum to the Post Closing Search.

J. Participating attorney or applicant may request additional information.

K. Participating abstractor may include additional information deemed prudent and/or necessary.



Pottawattamie County Report of Title

TO: _____ (NAME AND ADDRESS)

We furnish the following information of record in Pottawattamie County, Iowa:

LEGAL DESCRIPTION:

PROPERTY ADDRESS:

LAST GRANTEE, DEVISEE, OR HEIR OF RECORD:

UNRELEASED MORTGAGES AND ASSIGNMENTS:

COURT PROCEEDINGS, JUDGMENTS, LIENS, ETC.:

EASEMENTS:

ALL OTHER MATTERS OF RECORD AFFECTING TITLE:

SEARCHES HAVE BEEN CONDUCTED AGAINST THE FOLLOWING NAMED INDIVIDUALS ONLY:

TAXES AND SPECIAL ASSESSMENTS:

GENERAL TAXES for the year ____ and prior years, paid.

GENERAL TAXES for the year ____, \$ _____

First one-half, \$ _____, _____;

Second one-half, \$ _____, _____.

PARCEL NO. _____

ASSESSED VALUE: \$ _____
RESIDENTIAL TAXES: YES ___ NO ___

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS REPORT CONTAINS ALL MATTERS OF RECORD CURRENTLY AFFECTING TITLE TO THE REAL ESTATE DESCRIBED HEREIN. THIS REPORT IS MADE PURSUANT TO IOWA CODE SECTIONS 614.29 THROUGH 614.38 OF THE CODE OF IOWA. JUDGMENT AND LIEN SEARCHES HAVE BEEN MADE AGAINST ALL PARTIES WITHIN THE CHAIN OF TITLE PURSUANT TO TITLE GUARANTY REQUIREMENTS. THIS REPORT IS GIVEN SOLELY FOR THE PURPOSE OF ISSUANCE OF A CERTIFICATE BY THE TITLE GUARANTY DIVISION OF THE IOWA FINANCE AUTHORITY. NO LIABILITY FOR ERRORS OR OMISSIONS WILL ACCRUE TO THE BENEFIT OF ANY OTHER PERSON, FIRM OR CORPORATION. THIS REPORT IS NOT A GUARANTY OF TITLE, OR A STATEMENT AS TO THE LEGAL EFFECT OF ANY INSTRUMENT OR PROCEEDING INSPECTED.

SEARCH ending on _____ day of _____, 20__ at _____

A.M./P.M., _____ County, Iowa.

COMPANY NAME _____
ADDRESS _____
TGD # _____

By _____
(Authorized Signature)



Pottawattamie County Report of Title – Post Closing Search

TO: _____ (NAME AND ADDRESS)

We furnish the following information of record in Pottawattamie County, Iowa:

ABSTRACT NO. OR REFERENCE NO.: _____, LOAN NO. _____

PREVIOUS REPORT OF TITLE DATE AND TIME: _____

LEGAL DESCRIPTION:

PROPERTY ADDRESS:

LAST RECORDED DEED CONVEYS THE ABOVE DESCRIBED REAL ESTATE

TO:

WE ALSO FURNISH THE FOLLOWING NEW INFORMATION OF RECORD SINCE OUR PREVIOUS REPORT:

TAXES, AFFIDAVITS, JUDGMENTS, SATISFACTIONS, RELEASES, MORTGAGES, ASSIGNMENTS, DEEDS, ETC.:

THIS REPORT IS GIVEN SOLELY FOR THE PURPOSE OF ISSUANCE OF A CERTIFICATE BY THE TITLE GUARANTY DIVISION OF THE IOWA FINANCE AUTHORITY. NO LIABILITY FOR ERRORS OR OMISSIONS WILL ACCRUE TO THE BENEFIT OF ANY OTHER PERSON, FIRM OR CORPORATION. JUDGMENT AND LIEN SEARCHES HAVE BEEN MADE AGAINST ALL PARTIES WITHIN THE CHAIN OF TITLE PURSUANT TO TITLE GUARANTY REQUIREMENTS. THIS REPORT IS NOT A GUARANTY OF TITLE, OR A STATEMENT AS TO THE LEGAL EFFECT OF ANY INSTRUMENT OR PROCEEDING INSPECTED. THIS REPORT IS MADE PURSUANT TO IOWA CODE SECTIONS 614.29 THROUGH 614.38 OF THE CODE OF IOWA.

SEARCH ending on _____ day of _____, 20__ at _____
A.M./P.M., _____ County, Iowa.

COMPANY NAME _____
ADDRESS _____
TGD # _____

By _____
(Authorized Signature)

ADDENDUM: ALL AFFIDAVITS, RELEASES, SATISFACTIONS, OR OTHER CLEARANCE DOCUMENTS FILED OR RECORDED AFTER CERTIFICATION.

Standards for a Title Abstract

I. Purpose

Pursuant to Iowa Code section 16.91(6) (2000) and 265 IAC 9.6(4) Title Guaranty coverage must be based on an abstract of title brought up to date and certified in a form approved by the Title Guaranty Division hereinafter referred to as the "Division". The following is a guide for Participants which includes minimum standards for updating and creating abstracts.

There are several methods upon which abstracting can be accomplished by a Participating Abstractor.

II. Abstracting

In order to preserve the integrity of Iowa's land title system, traditional abstracting is the preferred method of searching titles in the State of Iowa. Abstracts shall be utilized, preserved and passed on to the extent possible.

A. Prior Abstract Exists - The Participating Abstractor shall abstract from the date and time of the last certification of an existing abstract in hand prepared by one or more Participating Abstractors authorized by the Division to abstract in the county in which the property is located.

B. No Prior Abstract Exists

1. Creation of abstract

A Participating Abstractor shall prepare an abstract including a forty year unbroken chain of title pursuant to the Marketable Title Act, Iowa Code section 614.29-.38. The abstract will begin with the "root of title", which is a conveyance or title transaction recorded at least 40 years prior that creates the title being examined. The end date or effective date will be the last day and time the county records were available. Abstracting will include all information required by the Iowa Land Title Association, Abstracting Standards (1994 Edition, Revised 1998), as amended from time to time. The information provided will be utilized by Participants to obtain the recording information, examine for title defects, interests, liens and encumbrances in preparing title opinions, Division Commitments and Certificates.

2. Plats of Subdivision

A Participating Abstractor may prepare an abstract for a subdivided city lot beginning with the filing of a plat of subdivision under the following circumstances:

- a. Plat of subdivision was recorded more than 10 years earlier;
- b. Plat has not been vacated;
- c. Lots or a subdivision of the lots have been sold and conveyed;
- d. For plats filed prior to July 1, 1982, no claim was filed prior to July 1, 1992 as provided for in Iowa Code section 592.3 (2005).

The complete platting of the subdivision and prior existing easements, restrictions, leases, agreements, plats, surveys, and encumbrances must still be disclosed in the abstract.

(Refer to Iowa Land Title Standard 1.5.)

3. Non-Purchase Transaction

A Participating Abstractor may prepare a short form abstract known as the “Title Guaranty Report of Title” (Division Forms 900 and 901) authorized under 265 IAC 9.3(16) when a residential title (a property with 1-6 living units) is being abstracted to cover a refinanced or junior mortgage indebtedness of \$500,000.00 or less. The search commences with the execution date of a deed for full value or at least two years prior to the certification date whichever is the longer period of time.

4. “Stub” Abstract

To expedite the closing of a transaction when the abstract cannot readily be located, the Division Board on January 6, 1998 adopted the use of a “stub” abstract prepared by a Participating Abstractor. The “stub” abstract must cover the period of time from the effective date of a previously issued Division Certificate to a date and time shortly before the closing. In order to obtain a new Division Certificate after closing, it is still necessary to locate and update the abstract or have the Participating Abstractor prepare a new abstract.

5. Pottawattamie County

When an abstract is unavailable because the abstract is lost, has been destroyed, or cannot be located, a Pottawattamie County Participating Abstractor who has obtained a waiver from the Iowa Finance Authority’s Board of Directors may prepare a Pottawattamie County Report of Title for Pottawattamie County residential transactions. The search procedure for a waived Pottawattamie County Participating Abstractor is set forth in section _____.

Section _____ *Pottawattamie County Report of Title*

I. Search Checklist for the Pottawattamie County Report of Title, Herein Referred to as “the Report”, Approved for specified Pottawattamie Participating Abstractors by the Iowa Finance Authority Board of Directors

A. Search Period

A Pottawattamie Participating Abstractor, herein referred to as “the Searcher”, will follow the same search period requirements for abstracts as disclosed in section _____, paragraphs B(1) and B(2)(a) therein.

B. Method of Search

1. Plant: The Searcher with an up-to-date abstract title plant including tract indices for real estate as required in Iowa Code section 16.91(5) (2000) for Pottawattamie County will utilize the plant to search the required period.

2. Pottawattamie County Records: The Searcher exempt or waived from the plant requirement shall utilize the Pottawattamie County Recorder’s Office, herein referred to as “the Recorder” to search the required period.

a. All records prior to July 1989 shall be searched through the grantor/grantee indexes in the following books: 120 Day Affidavit; Affidavit of Possession; Claimant for years up to 1979 (for affidavits to preserve claims, marketable title affidavits, etc.); Lands(Subdivided) and/or Lands(Un-subdivided); Miscellaneous (various affidavits, for documents that do not contain legal descriptions); Mortgage (includes postings of assignments, amendments and releases); and Plats.

b. Records from July 1989 must be searched in the Recorder computer records at pottcounty.com and the Iowa Land Title at iowalandrecords.org.

C. Interests to be Included in the Report

1. All matters of record prior to the search period may be omitted except for:
 - a. Plats and surveys;
 - b. Grants of easement;
 - c. Leases;
 - d. Boundary line agreements.

2. Any outstanding interest of the United States of America
3. Covenants, conditions, and restrictions not expired pursuant to the Stale Uses and Reversion Act. Note: The Stale Uses and Reversion Act does not apply to an interest of the United States, easements or to a reversionary interest in railroad property if reversion is caused by abandonment of property for railroad purposes after July 1, 1980.
4. Last conveyance and all irregular conveyances within the search period
5. Mortgages with its related amendments and assignments which are not properly released of record, or not extinguished by Iowa Code section 614.21
6. Condominium declarations and amendments
7. There are also miscellaneous documents that commonly appear in the chain of title that may require an explanation or shown in full such as powers of attorney, affidavits, lis pendens, mechanics' liens, bankruptcies.

D. Documentation

1. Abstracting of documents must include at a minimum the following available information:
 - a. Date of the document;
 - b. Date of acknowledgement of the document;
 - c. Date of recording of the document;
 - d. The document number or book and page;
 - e. Marital status of the grantors;
 - f. Missing homestead, dower and curtesy rights;
 - g. Estate or tenancy of the grantees in deeds;
 - h. Restrictions, covenants, or agreements;

- i. Location of easements;
 - j. Clauses stricken from a preprinted form;
 - k. Variations in the legal description in the document with the legal description searched;
 - l. Absence of, or inconsistencies or irregularities in the signatures and acknowledgements of the document.
2. If a document is a non-standard form or contains substantial information, the Searcher may provide a copy of the recorded document with the Report. All relevant portions of the document must be provided, such as the first page disclosing the recording/filing information, pages including discrepancies in legal descriptions, easements, restrictions, certifications and signatures.

E. Judgment and Lien Report

A judgment and lien search shall be performed by the Searcher in all Pottawattamie County court records. Name searches will cover at least the past 10 years. Lis Pendens Notices and mechanic lien searches will be made against the legal description. Most Pottawattamie County District Court records beginning February 1, 1992 will be searched using the ICIS System at www.judicial.state.ia.us except for the Lis Pendens Notices. Refer to the Reference Guide for Liens disclosed in section II below.

F. Real Estate Taxes

The Searcher shall investigate the Pottawattamie County Treasurer's real estate tax records for the past 5 years. The status of taxes will indicate whether the taxes have been unpaid, paid, sold, forfeited, redeemed, for the most recent year's taxes.

G. Special Assessments

The Searcher shall show assessments reported to the county. If the individual township or city for assessment information is not reported to the county, the Searcher should contact and obtain the assessment information from such entity. Show the date the special assessment was confirmed, the amount due, the total number of installments, if any, and the status of payment.

H. The Report

1. Chain of title documents

The Searcher should keep a checklist of all instruments found in searching the chain of title. A review of each instrument must be made to determine whether it affects the property in question and whether the instrument is sufficient to pass title. If any defects or questions regarding the title are found, the instrument must be abstracted or a copy of the instrument attached to the Report. The last grantee, devise, or heir of record must be provided in the Report. If the Participating Attorney is not satisfied with the last instrument when reviewing the Report, the Searcher should abstract or provide any underlying documentation that the Participating Attorney requests.

2. Break in the chain of title

- a. Interloper

If a deed from an interloper is found in the search, the Searcher shall show the chain of title instrument by abstract or copy up to the last grantee before the interloper, then abstract or attach the deed from the interloper with a note that the deed is outside the chain of title, and continue the search by abstracting or attaching copies of instruments through both the interloper and the proper grantee in the chain in the Report, if possible.

- b. Stray Deed or Mortgage

If the search reveals a stray deed or mortgage (a deed or mortgage where neither the grantors or mortgagors nor the grantees or mortgagees appear anywhere in the chain of title), the Searcher shall abstract or provide a copy of the stray deed or mortgage with a note that the grantors/mortgagors and the grantees/mortgagees do not appear in the chain of title, and continue the search through the proper grantees.

3. Releases and terminations recorded with the Pottawattamie Recorder's Office

The Searcher should keep a checklist of any recorded liens or encumbrances or herein referred to as "hit" or "hits" found when searching the plant or county title records after a review of the document to determine whether it affects the property in question or the parties to the transaction. Releases or terminations of hits must then be searched for in the land record or title plant. The release or termination may be indexed with the entry of the encumbrance or a search of the grantor and grantee names may need to be run, depending on the search system being utilized. The releases and terminations must be pulled and examined to determine the sufficiency of each document. If a release or termination is sufficient, the lien or encumbrance does not need to be disclosed on the Report;

but if any question of sufficiency is noted, the hit along with the releasing or terminating document must be abstracted and/or copies thereof attached to the Report.

4. Releases and satisfactions filed with the clerks of court in Pottawattamie County

The Searcher should keep a checklist of any filed judgments, liens or encumbrances herein referred to as “hit” or “hits” found when searching the clerk of court records after a review of the documents to determine whether it affects the property in question or a name similar to the parties in title or proposing to take title. Releases and satisfactions of hits must then be searched for in the clerk of court records. The release and satisfaction may be indexed with the entry of the hit or a search of the grantor and grantee names may need to be run, depending on whether the clerk of court records or the ICIS computer is being utilized. The releases and satisfactions must be pulled and examined to determine the sufficiency of each. If sufficient, the judgment, lien or encumbrance does not need to be disclosed on the Report; but if any question of sufficiency is noted, the hit along with the satisfaction and/or release must be abstracted and/or copies thereof attached to the Report. All pending proceedings should be abstracted or appropriate copies attached to the Report.

5. Name Searches

The search shall provide information on similar names and commonly known nick names. No representation should be made as to whether the information provided is actually that of the parties to the particular transaction. This is the responsibility of the Participant issuing Title Guaranty Commitments and Certificates.

6. General Real Estate Taxes Procedure

a. Identification of taxes

Identify the type of property and the permanent index number (PIN) assigned to the property in the Report. All PINs that affect the property must be verified by the Searcher. If a PIN affects property in addition to that being searched, that fact must be disclosed in the Report. If more than one PIN affects the property being searched, those additional PINs must be searched and included in the Report.

b. Payee notes

Note the names of the party paying the real estate taxes (or the party to whom the taxes are billed). If the tax records disclose payment was made

by or billed to someone other than the seller of the property, this fact may indicate the existence of a contract sale or lease of the property that may not appear of record and the Searcher should include this information in the Report. This procedure also applies to special assessments paid by someone other than the titleholder. It does not apply to taxes paid by the mortgagee for an existing mortgage against the property.

c. Last tax bill

Determine the amount and status of the last known tax bill. When available, provide a copy of the most recent year's tax bill in lieu of filling it out on the Report.

d. Period of search

Review the real estate taxes through the last 5 years of taxes paid in full. The 5 year period begins with the last taxes that could have been sold at tax sale. For example, assume that the commitment was effective July 1, 2006 at 8:00 a.m. Real estate taxes for the fiscal year 2004/2005 payable 2005/2006, if not paid, would have been offered at the June 2006 tax sale. Therefore, the five year period would begin with the payable 2005/2006 taxes meaning that the Searcher would check for payments of the payable tax years 2005/2006, 2004/2005, 2003/2004, 2002/2003 and 2001/2002. If taxes have been unpaid, sold or suspended, the search may need to cover a longer time period.

7. Report forms

The requirements for the Report shall be provided by authorized Pottawattamie abstractors utilizing Division standard forms known as the Pottawattamie County Report of Title and the Pottawattamie County Report of Title – Post Closing Search.

I. Gap Searches

When gap coverage is provided, the Searcher must complete the Pre-Closing Certification Division Form PCS as soon as practical before closing.

J. Title Guaranty Programs

All Title Guaranty Programs and coverages, including the gap endorsement, Rapid Certificate and Closing Protection Letter are available when the Report is utilized.

K. Record Keeping

The Searcher shall retain a written or electronic copy of the checklist used to prepare the Report and the Report itself which shall be made available to the Division upon request pursuant to the Iowa Administrative Code Chapter 9.6(4)(b).

II. Reference Guide for Liens – Attached is a useful table of various liens that may be encountered during the search process and the statutes of limitations relating to those liens. This list is not intended to be an all inclusive list of liens for the State of Iowa.

Reference Guide for Liens

Type of Lien

Statute of Limitations

Mortgage

10 years from maturity date of mortgage; 20 years from date of mortgage when no maturity date is shown (Iowa Code section 614.21)

UCC Fixture Filing

5 years unless extended (Iowa Code section 554.9515(1)); until mortgage is released or satisfied of record if filed with mortgage (Iowa Code section 554.9502)

Judgment, generally

10 years from date of judgment unless extended (Iowa Code section 624.23(1))

child support

10 years from date the monthly payment is due: show payments made to clerk of court; if made to other payee show all payments due unless released and satisfied of record; be sure to disclose court extensions, amendments, transcribed judgments, etc. Out of state courts may have a longer statute of limitations.

Mechanics

2 years after the expiration of 90 days for filing the claim (Iowa Code section 572.27)

Miners

Secured and enforced in same manner as mechanic lien claim (Iowa Code section 54.1)

Iowa Income, Withholding, Use or Sales Tax

10 years from date of assessment unless extended by refiling for additional 10 years, no limit on extensions (Iowa Code section 422.26, 422.16(16), 423.42(2))

Federal Income Tax

10 years from date of assessment unless extended

Iowa Inheritance & Estate Tax

10 years from date of death (Iowa Code section 450.7 (1) and 451.12)

Federal Estate Tax

10 years from date of death

Federal Non-Tax Liens

20 years unless extended

Real Estate Taxes

Unlimited

Hazardous Waste

No expiration date

Lis Pendens Notice

Until final determination made

RESOLUTION

WHEREAS, the Iowa Finance Authority (the “Authority”), in accordance with the statutory directives set forth in Chapter 16 of the Code of Iowa, as amended, through the title guaranty division, is empowered to make and issue title guaranties on Iowa real property in a form acceptable to the secondary market, to fix and collect the charges for the guaranties and to procure reinsurance against any loss in connection with the guaranties; and

WHEREAS, the Iowa Finance Authority (the “Authority”), in accordance with the statutory directives set forth in Chapter 16 of the Code of Iowa, as amended, has the power to make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

WHEREAS, the Board has received a Request for Waiver of Title Guaranty Rule Contained in 265 IAC 9.3 (16) pertaining to the Definition of an “Abstract of Title” or “Abstract” by applicant Abstract Guaranty Company for Pottawattamie County.

WHEREAS, the Board finds that the authority has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law.

WHEREAS, the Authority desires to grant this waiver, subject to certain conditions and limitations;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Iowa Finance Authority as follows:

SECTION 1. The Board hereby grants to Abstract Guaranty Company a waiver of the Rule contained in Iowa Administrative Code 265 – 9.3(16) “Abstract of Title” or “Abstract” that states that an abstract for title guaranty purposes, is a summary of “all matters of record”; and

SECTION 2. Pursuant to Iowa Administrative Code 265 – 18.10(17A,16), the Board adopts the Order Approving the Request for Waiver of Iowa Administrative Code 265 – 9.3(16) attached hereto as Exhibit A.

PASSED AND APPROVED this 12th day of June, 2007.

Bret L. Mills, Secretary
(Seal)

EXHIBIT A

IN RE:)	
)	
)	
Abstract Guaranty Company)	ORDER GRANTING REQUEST FOR
)	WAIVER OF IOWA ADMINISTRATIVE
)	CODE RULE 265 — 9.3(16)
)	
)	
)	

Background.

Abstract Guaranty Company has requested a Waiver of the Title Guaranty rule which defines an abstract [265 IAC 9.3(16); Definitions; “Abstract of title” or “abstract”].

This rule defines “abstract of title” or “abstract” for Title Guaranty purposes to include a “...summary of all matters of record...” affecting the property. By granting a waiver of the “of all matters of record” language, a Pottawattamie County Report of Title (Report) would show matters of record now affecting the property. The Report would not include all matters of record – it would only include those matters now affecting title (i.e.: unreleased mortgages, easements, judgments, etc.). The Report would not show released mortgages or every prior deed in the chain of title. The Report would typically go back to Government Entry (when the United States was the titleholder) looking for easements and come forward from the root of title (a deed filed at least 40 years ago) with a showing of all deeds reflecting a current interest in the title.

This waiver request is before the Board because the abstract/opinion system is not, as a practical matter, used in Pottawattamie County. The two Title Guaranty participating abstractors with title plants are competing with title companies located in Council Bluffs and Omaha that conduct “title searches” in lieu of an abstract without the benefit of a title plant. The searches typically done by the title companies do not result in a product that can be used to determine if title is “marketable” according to Iowa law. These searches are less-than comprehensive, rarely date back to the root of title, and as a result, easements, support judgments, mortgages, and other items are often missed. Because of this long standing practice, most abstracts have been lost or destroyed and recreating the abstract is expensive and time consuming.

Facts:

Pottawattamie County is one of the fastest growing areas in the state of Iowa. Over the past several years, Council Bluffs and surrounding communities have experienced tremendous growth. Since 2004, approximately 7,000 mortgages have been filed of record each year. Given the city’s close proximity to the Omaha metropolitan area, it appears as though the growth will continue.

Title Guaranty staff has spent considerable time over the past year in Pottawattamie County communicating with lenders, realtors, attorneys, and abstractors. The following information was gathered from their discussions and reported to this Board:

- Title Guaranty issued 36 Lender Certificates in 2006
- 6,746 mortgages were filed in Pottawattamie County in 2006
- Out-of-state title insurance companies dominate the market
- Consumers are paying higher title prices as compared to the rest of Iowa
- The quality of real estate titles is rapidly declining
- Attorneys are not involved in residential real estate transactions
- Abstracts are not being created or provided to owners of lots in new residential subdivisions

Title Guaranty also reported that Realtors in Pottawattamie County routinely elect title insurance or encourage their clients to use title insurance in lieu of the abstract/attorney title opinion system because of their perception that abstracts are costly and time-consuming. The lack of attorney involvement in residential real estate transactions greatly concerns Title Guaranty. Attorneys rarely examine abstracts and are generally not involved in closings even though the abstractor/attorney system contributes to the quality of real estate titles in Iowa. If a buyer elects the abstract/title opinion system, a new abstract must be ordered. The cost to create a new abstract typically exceeds \$600.00 and takes several weeks or even months to complete.

Reasons to grant the waiver:

- Section 16.91 of the Iowa Code provides that the Title Guaranty Division shall offer guaranties of real property title in the state of Iowa. Title Guaranty has a statutory mandate to issue coverage on a statewide basis. Their mission is to facilitate the sale of loans on the secondary market and add to the integrity of Iowa's land title system. Title Guaranty has an obligation to ensure that Title Guaranty coverage is available in all 99 counties. Without a waiver, as a practical matter, Title Guaranty is not available in Pottawattamie County.
- The quality of real estate titles is suffering in Pottawattamie County. Abstracts are not being updated or maintained. Instead, out of state title insurance companies are closing transactions based on searches which rarely extend beyond the last deed. This practice leads to title problems which eventually come to light and end up costing homeowners significant time and expense. If the waiver is granted, the abstract/attorney system can be reestablished in Pottawattamie County, resulting in higher quality titles.
- Iowa Finance Authority's (IFA) homeownership programs, including FirstHome, FirstHome Plus, and the Military Grant Program are not readily available in Pottawattamie County because abstracts are unavailable. Lenders, realtors, and borrowers are reluctant to take advantage of these programs once they realize the cost in terms of money and time associated with building a new abstract.

- When Title Guaranty is involved in the transaction, an attorney reviews the title. Title problems are uncovered before the buyer has a financial interest in the property which results in clean land title records.
- This product is desired by the real estate industry in Pottawattamie County as evidenced by letters of support. The Pottawattamie County Bar Association passed a resolution in favor of this waiver request.
- If Title Guaranty is able to re-enter the market in Pottawattamie County, consumers will save money.¹

Standards for a waiver of an Administrative Code provision:

Criteria for Waiver or Variance

Chapter 18 of the Iowa Finance Authority’s (IFA) Administrative Rules governs waivers and variances from administrative rules. As the rulemaking authority for the Title Guaranty Division, IFA’s Board of Directors is the appropriate body to decide this request for a waiver. Chapter 18 provides that a waiver of an administrative rule is appropriate if the Board finds the following criteria are satisfied:

1. The application of the rule imposes an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

IFA rule 265 — 18.10 (2) provides that “[t]he burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the authority should exercise its discretion to grant a waiver from an authority rule.” Rule 265 — 18.10(1) provides:

The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority upon consideration of all relevant factors. The authority shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

¹ Attached hereto are pricing sheets from two companies operating in Pottawattamie County. Title Guaranty has reported that they believe these two companies have captured the majority of the market. On a \$100,000 purchase transaction, the cost ranges from \$455.00 to \$462.50 for basic coverage. For a \$200,000 transaction, the cost is \$655.00 to \$662.50. Title Guaranty will be able to offer lender coverage, including standard endorsements such as Comprehensive, Environmental, and Location for less than \$400.00 on all residential transactions under \$500,000. When a lender certificate is issued, Title Guaranty provides owner coverage for free. Our pricing will result in significant savings to consumers in Pottawattamie County.

Ruling.

The Petition came before the Board at its June 6, 2007, regular meeting. This Board finds the following:

1. Undue hardship:

By requiring a traditional abstract on residential purchase transactions, the Title Guaranty product cannot compete with that offered by out-of-state title insurance companies. For example, when Abstract Guaranty Company is required to create a traditional abstract for Title Guaranty, they consistently lose the business to title insurance companies that issue coverage based on ill-defined searches. Requiring a traditional abstract for Title Guaranty purposes on residential purchase transactions imposes an undue hardship on the Petitioner, Abstract Guaranty Company.

2. Prejudice:

Allowing the use of a “Pottawattamie County Report of Title” will not prejudice the substantial legal rights of any person. Lenders, homebuyers, etc. will be free to use another search provider or traditional abstractor and order whichever product they so choose.

Title Guaranty is not readily available in Pottawattamie County. The number of certificates issued by the Division is quite telling. The Title Guaranty Division issued just 36 lender certificates in 2006. Nearly 7,000 mortgages were filed of record in Pottawattamie County that year. The Title Guaranty market share in Pottawattamie County is less than 1%, greatly less than the statewide percentage of business done by Title Guaranty.

3. Specific mandate by statute or law:

The Iowa Code does not specifically define an abstract. For purposes of the Title Guaranty program, the term “abstract” is defined in IFA’s administrative rules. What constitutes an abstract is not specifically mandated by statute or another provision of the law.

4. Equal Protection:

Equal Protection will be afforded the public in Pottawattamie County with a temporary waiver or variance of the rule defining an abstract. The Report, if approved, will allow the public in Pottawattamie County to participate in the Title Guaranty program and have the commensurate protections from the abstract/title opinion Title Guaranty system, which is a public purpose.

Ruling:

Upon review of the Request for Waiver from Abstract Guaranty Company, the facts, and the administrative rules, the Board is persuaded that the Standards for Waiver or Variance have been met, and that the Waiver should be granted, subject to certain terms and conditions.

SECTION 1. The Board grants to Abstract Guaranty Company a waiver of the Rule contained in Iowa Administrative Code 265 – 9.3(16) “Abstract of Title” or “Abstract” that states that an abstract for title guaranty purposes, is a summary of “all matters of record”; and

SECTION 2. The Board grants this waiver to Abstract Guaranty Company for real estate located in Pottawattamie County; and

SECTION 3. The Board grants this waiver, subject to the terms and conditions of this Resolution, for a term of five (5) years; and

SECTION 4. The Board limits this grant of waiver to those situations where a traditional abstract is unavailable because the abstract is lost, has been destroyed, or cannot be located; and

SECTION 5. The grant of waiver shall be conditioned on the development by the Title Guaranty Division, and approval by the Title Guaranty Board, of specific terms and provisions of the “Abstract” search product to be used by Abstract Guaranty Company in Pottawattamie County.

PASSED AND APPROVED this 12th day of June, 2007

Bret L. Mills, Secretary
(Seal)