

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:

Approved as to form:

Loyd W. Ogle, Director
Title Guaranty Division

Deborah Petersen, Chair
Title Guaranty Division