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April 25, 2008

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

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

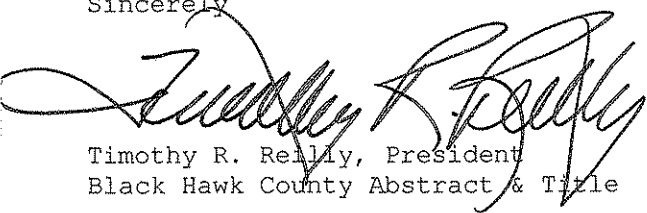
To: Loyd Ogle

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 abstracters 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 inquires 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


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

IFA-04/28/08-AM093021

White, Matt [IFA]

From: Chuck Augustine [caugustine@titlesc.com]
Sent: Thursday, April 17, 2008 1:06 PM
To: White, Matt [IFA]
Cc: Ogle, Loyd [IFA]
Subject: FW: discussion draft of admin. rules re waiver

Matt -

I wanted to send comments on the waiver administrative rules draft. Rather than re-invent the wheel, I am going to forward to you comments that I believe David Dunakey previously had sent to you. Please note that I agree with his comments, particularly with regard to numbered paragraphs 4 and 5. I do not believe these suggested changes would be detrimental to Title Guaranty. In fact, I believe to the contrary that they would be to the benefit of the division. Please review these comments and let me know if you disagree or if you think that our suggested changes would prove detrimental to Title Guaranty.

Chuck Augustine.

Matt, Chuck Augustine copied me with the new proposed rules. I think it is an excellent start but there are several matters that require comment:

1. in 9.7(1)"The division recognizes the forty year title plant as the preferred method of providing title evidence..." I know that title plant abstracters have sold that idea to the Division and legislature, but it is frankly untrue. The Iowa law provides that documents do not impart constructive notice unless properly indexed; title plant abstracters never verify indexing- only a direct search will reveal proper indexing. the Iowa Supreme Court has upheld that statute for 150 years. Therefore the only legally recognized search is a direct search - period.
2. in 9.7(5) contains a reference to an "interested person" that term is not a defined term, but I assume it is referring to the list of people previously mentioned in the paragraph but it is unclear. After "interested person" I would add ", set forth in this paragraph," Otherwise you run the risk of everyone claiming to be an interested person.
3. 9.7(8)a.(4), requires references from two attorney and one title-plant abstracter. You may recall that Chuck and I had a reference from a title-plant abstracter but that requirement will make it virtually impossible for anyone now to get such a reference considering the current attitude that exists. Why not say: "Three professional references from persons possessing knowledge of abstracting, such as participating attorneys and abstractors."
4. 9.7(8)b.(2) We recognize that the waiver is personal in nature and that we are personally liable, but I am concerned that the last sentence will be interpreted to mean that we can't operate through a separate entity. This is a very delicate issue. You are aware of the recent push by the Iowa Attorney Disciplinary board to require companies such as ours to run everything through an IOTA account (they were hungry for the interest). Without going into great detail they were flat wrong in their position and for now at least have abandoned that position. Why not have the second sentence say: "Although an attorney may abstract through a separate entity, such liability cannot be transferred..." You are aware that in the current market, companies refuse to do business through law firms. If we had to abstract under our personal names we would be out

of business.

5. 9.7(8)b.(3) requires that the attorney be licensed - I understand that we don't want disbarred or suspended attorneys abstracting. But what is the rationale for requiring an Iowa License? An attorney still has the same knowledge, licensed or not. I have considered putting my license on "hold" because all I do is abstracting, but I am still an attorney.
6. 9.7(8)b.(4)(a) provides a method by which an attorney seeking a waiver can apply if he/she has been abstracting under the supervision of a exempt attorney. I think this is an excellent and necessary provision. I am not sure of the intent, but one purpose may be so that the upcoming attorney can follow in the footsteps of an exempt attorney. If that is the case there should be mention that the matters of hardship and public interest that were established when the supervising attorney was granted a waiver have already been established. If i die the circumstances that justified my being granted a waiver don't die with me. We have a licensed attorney abstracter who has worked for us since he graduated from law school, all he does is abstracting. It doesn't make sense to me if he would have to reprove the elements for a waiver all over again in the event of my demise.
7. 9.7(8)b.(4)(b)vi.indicates that a proper consideration is whether grant of a waiver will adversely impact the business of participating abstracters. Matt I have real concerns about this language, I think it should spell out that the affect on other competitors is NOT a legitimate factor to consider. Also title plant abstractors will always be able to make such an argument, even those who are offering an inferior product and/or have a terrible title plant. Plus by including that language the Division is endorsing the virtual monopoly held by title-plant abstractors. At a minimum if the language is retained there should be language added that if a title-plant abstractor makes that argument their title plant is subject to inspection and certification.

Please give these ideas consideration. Even as it stands it is a significant improvement regarding the waiver process. dave

White, Matt [IFA]

From: DAVID D. DUNAKEY [ddunakey@surfvi.com]
Sent: Wednesday, April 09, 2008 2:48 PM
To: White, Matt [IFA]
Subject: discussion draft of changes to waiver procedures

Matt, Chuck Augustine copied me with the new proposed rules. I think it is an excellent start but there are several matters that require comment:

1. in 9.7(1)"The division recognizes the forty year title plant as the preferred method of providing title evidence..." I know that title plant abstracters have sold that idea to the Division and legislature, but it is frankly untrue. The Iowa law provides that documents do not impart constructive notice unless properly indexed; title plant abstracters never verify indexing- only a direct search will reveal proper indexing. the Iowa Supreme Court has upheld that statue for 150 years. Therefore the only legally recognized search is a direct search - period.
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(712) 255-6993
(712) 253-1221

George F. Madsen
3916 Sylvian Ave.
Sioux City, IA 51104

IFA- 04/25/08/ #101420

April 22, 2008

Re: Role of Abstracters with Title Guaranty

Matt White
Deputy Director
Title Guaranty
2015 Grand Avenue
Des Moines, IA 50312

Dear Matt:

Thank you for sending the materials concerning the roles of attorneys and abstracters in the guaranty of title process. My comments will be general in nature.

1. About forty years ago our office was state counsel for an organization then call Gulf Central Pipeline Company. Gulf Central built approximately 400 miles of pipeline. The line commenced in the southeasterly corner of the state, made a long half-circle up to the northern tier of counties, and exited on the western boundary in Harrison County, crossing the Missouri at that point. As I recall there were 1200-1400 separate parcels across which easements were purchased. No abstracts were purchased. We selected an abstracter in each county who furnished a title report covering title transactions for the last 20 or 21 years. The report included the last warranty deed of record at least 20 or 21 years.

In one county, the sole abstracter refused to work for the fee paid the others. Gulf Central hired a crew of right-of-way agents to search the records in the county and produce the reports furnished by abstracters in the other counties. No consent to the easements were obtained from mortgagees or lien holders.

This procedure was approved by attorneys for the indenture trustee. Our review of the records for the trustee consisted of reviewing the title reports and the recorded easements. We were also furnished a report by the abstracters that no change of title had occurred after the initial title report. To my knowledge, not a single easement was ever attacked by third parties. I should add that only as to one owner were we obligated to go to condemnation.

I outline this experience not to suggest that prospective owners in Iowa of real property or their mortgagees should adopt a similar procedure. However, I believe the experience makes clear that relying on abstracters and attorneys is not the only means of achieving acceptable evidence of title in the marketplace.

2. The Iowa land title recording system was not enacted to provide employment for

abstracters, but was designed to produce evidence of title based on a grantor-grantee indexing system. Iowa has never had an official plat indexing system though in some counties I am told recorders maintain a private tract index system. An abstracter makes a record in a private tract index of every transaction affecting that tract. Today there is no reason why attorneys may not go into a recorder's office, review the indices, and prepare an opinion of title. This search would also have to include, for example, the Clerk and Treasurer. Parenthetically I would note that I have asked many abstracters if they know of any abstracter who checks the indexes to assure proper indexing and I have never found one who did, even though an improperly indexed instrument does not constitute constructive notice.

The first couple of years I practiced I worked for a firm in Ohio located in a county where there were no abstracters. We examined titles by an examination of the records in the various public offices. Often our title opinion was the basis for a title company issuing a policy. The process is laborious and was performed usually by either very old or very young lawyers. However, the system worked and there is no reason why Title Guaranty should not by statute be authorized to issue a guaranty using the same process.

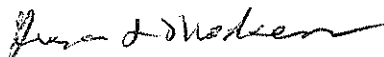
3. The announced rationale for handicapping Title Guaranty with the "Forty year Title Plant" requirement was that the abstracters agreed not to support any proposals for Title insurance. That understanding was since rejected by the abstracters who now not only want to further cripple Title Guaranty, but are supporting Title Insurance in Iowa.

Abstracters support for title insurance is for the obvious reason that such will be highly profitable for abstracters. Title companies will pay a premium for abstract plants, particularly in counties where there are no other abstracters. South Dakota has enacted legislation, which produces a defacto monopoly for existing plants. The result is the existing plants have become extraordinarily valuable. Note the Iowa abstracters are promoting similar legislation, which is not in the public interest.

4. In my view Title Guaranty should strongly urge the Iowa Legislature to remove the restrictions presently imposed on it and permit Title Guaranty to issue policies on the basis it deems in the public interest. Today title companies are issuing policies in Iowa based on abstracters' "reports", which cost far less than an abstract. Why should Title Guaranty not be authorized to do the same? A simple question—if title insurance becomes legal in Iowa, and the title companies buy up most of the abstracters, how much do you think Title Guaranty will be charged for its abstracts?

The Iowa State Bar Association should support without qualification the effort of Title Guaranty to have removed the shackles the abstracters have imposed on it and are attempting to make tighter.

Very truly yours,



Cc J. Greer, D. Moore, A. Fredregill, J. Carney

To draft a satisfactory act will require skill of the highest order. Some remedy for the present situation is imperative and urgent. The growing needs of home owners and of commercial interests indicate that drastic remedies are going to be attempted, if not by qualified experts, then by laymen. The legal profession should certainly not repeat the mistakes, so frequently made in the past, of refusing to take the lead in devising reforms and permitting unskilled laymen to bungle the job.

IV. CONCLUSION

We have repeatedly admitted that thoroughgoing reforms are necessary. The organized bar has been calling for action for more than twenty years. The leading experts on real property law in our several schools have been urging the bar to take the lead. Our legislatures contain lawyer-members who certainly have the influence necessary to secure enactment of the required legislation.

The demand for meaningful change has been articulated by the Chief Justice of the United States Supreme Court in unpublished remarks by the Honorable Warren E. Burger to the opening session of the American Law Institute, May 21, 1974, at Washington, D. C.:

"When I began to practice law the newest associate in the firm was assigned the task of examining titles and closing real estate purchases, and he continued in that role until another new man came along. In that apprenticeship I examined many hundreds of land titles and closed an almost equal number of purchase and financing transactions.

"The cost at that time ranged from \$15 to \$30 for the purchase of the typical home. There is a growing practice of using title insurance either as a substitute for or in addition to the lawyer's title opinion.

"Today, we know that in many states the incidental costs of acquiring a new home, even in the \$40,000 category, can run into a very large sum. We know that, in common with others, the operating costs of lawyers have skyrocketed in recent years, but the very cost of the procedure today dictates that we examine the whole business closely.

"The basic system of real estate titles and transfers and the related matters concerning financing and purchase of homes cries out for reexamination and simplification. In a country that transfers not only expensive automobiles but multimillion dollar airplanes with a few relatively simple pieces of paper covering them and all, I believe that if American lawyers

will put their ingenuity and inventiveness to work on this subject they will be able to devise simpler methods than we now have.²²

The reforms accomplished to date fall far short of the "few relatively simple pieces of paper" described by Chief Justice Burger as the desideratum of a modern system of conveying interests in real property. Lawyers must recognize that the existing system is simply inadequate to serve the needs of modern society. It is incumbent on lawyers to utilize existing technology to not reform, but to replace our conveyancing procedures with "a simple piece of paper."

4.2 GRANTEES.

- (A) CONVEYANCE TO ESTATE OF DECEASED PERSON.
- (B) IDENTIFICATION AS HUSBAND AND WIFE.
- (C) ALTERATION OF DEED BY GRANTEE.

(A) CONVEYANCE TO ESTATE OF DECEASED PERSON

I have your letter in which you inquire as to the effect of a deed conveying real estate in the year 1881 to "W. B. Beattie Estate." You also inquire whether such property after being conveyed to the "estate" would have to be inventoried for inheritance tax purposes.

The general rule is that a conveyance by deed to a fictitious or nonexistent person is a nullity. The "estate" of a person deceased is not a legal entity.²³

As a practical problem, you have to determine where title lies at the present time. There have doubtless been conveyances since the date of this deed, 1881; and if you have a chain of title conveying the entire interest which antedates the cutoff date under the statute, you can perhaps render title marketable by an affidavit of possession.²⁴

²² Quoted from *Presbytery of Southeast Iowa v. Harris*, 228 N. W. 2d 232, 236, 237 (Iowa, 1975).

²³ No Iowa authority has been found. It has been said: "... [T]he grantee listed must be capable of identification and one recognized as having legal entity. This excludes the name of a party deceased at the date of delivery, or a deed to inanimate objects such as the 'estate' of a deceased person." 3 American Law of Property § 12.40 (Carnar ed. 1962) (footnote citations omitted).

²⁴ Iowa Code, § 614.17. The deed to the estate would qualify as a "root of title" and a title transaction under Iowa Code, § 614.29 (5)(c). Unless properly preserved, any interests created prior to the root of title would be barred. Iowa Code, § 614.36.

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

Loyd Ogle
Director, Title Guaranty Division
2015 Grand Avenue
Des Moines, IA 50309

Loyd,

I and a good number of my constituents have great hope that this is a starting point for Title Guaranty, Iowa Land Title Association and the Bar Association to begin working towards some changes that will benefit us all.

As you know there is a great deal of frustration in Iowa Land Title Association's membership with the current state of the waiver process. I am personally encouraged to see this process move forward. I appreciate your vision to address these issues as well as the dedication of your staff and resources to do the hard work that was required to get this draft to this point.

The electronic age will truly make the creation of new title plants faster, cheaper and better than ever before. These new plants will be able to produce very accurate high-quality title searches very quickly. Working this way carries extremely low risk for the underwriter, and that is beneficial to the public as a whole. We are already seeing a shift away of the casualty based title insurance model, and back to a search based product in some parts of the country.

The Iowa Land Title Association is proud of Iowa's title system, and we have maintained our enviable position because we've never lowered our standards. Our abstractors strive to be knowledgeable, professional and competitive. Plant abstractors index everything and we show everything. Our practice of putting everything on the table, good or bad, greatly reduces Title Guaranty's exposure to claims.

Sincerely,



Bill Blue
President, Iowa Land Title Association

9.7(2)

Hardship -

The definition of ***Hardship*** remains ambiguous in that the cost of building a title plant will always exceed income initially. Even if a timeline-test were incorporated into this definition as a guideline for reasonable expectation of return on investment, this test could be defeated at-will through poor financial management.

The costs borne by all of the Title Guaranty Participating Abstractors who maintain a title plant is a significantly more than minimal.

Public Interest-

The act of allowing attorneys to compete with abstractors by waiving for them the standards that abstractors must spend millions of dollars to abide by would not fall into the general public's idea of protecting consumers. Nearly every attorney I've discussed this matter with fails to see any benefit to the public as a whole, but rather a benefit to a small group of waived attorneys.

Each abstract or Title Certificate should be required to state on its face the search method employed to produce the search product. The statement should indicate whether the product had been prepared in compliance with Title Guaranty's plant requirement. If the participating abstractor had been waived from that requirement and is relying on an alternative search method, the statement should describe the search method in simple terms. The public interest would be served by this full and honest disclosure.

Title plant -

The definition of ***Title plant*** makes no attempt to describe the index structure that makes a title plant a *title plant*. According to this definition, every Recorder's office is a *title plant*. The definition for Title Plant for the purposes of these rules should be the same as is contained in Iowa Code Section 16.91(5):

“ . . . 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. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program . . . ”

9.7(8)

b. Permanent Waivers –

In creating the Title Guaranty Program, the legislature saw a need to provide a method of allowing abstracting in counties where no title plant exists. To that end, the Title Guaranty Division must have a method to provide title guaranties throughout the state, and inherent in that power must be the ability to waive its own rules.

Did the legislature believe an attorney's education prepares him to abstract more proficiently than a competent, experienced abstractor, and thus the only persons eligible for permanent waivers are attorneys? Or did the handful of persons abstracting without title plants at the time just happen to be attorneys? Or were there non-attorneys with no ability to lobby or other kind of political standing, so their interests were simply ignored? Iowa Code 16.91(5) makes no differentiation between attorneys or abstractors with regard to the waiving of the subsection's rules.

Iowa Code 16.91(5)

"The participation of abstractors and attorneys shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

Additionally, 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. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program. However, a participating attorney providing abstract services continuously from November 12, 1986, to the date of application, either personally or through persons under the attorney's supervision and control is exempt from the requirements of this paragraph.

*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 assertion that the legislature may have contemplated our present state of affairs, and in doing so purposefully made no geographic limitation on waived attorneys, is patently absurd. In 1985 no one but the writers of science fiction novels had fathomed the interconnectivity of data and commerce that we presently possess. The legislature realized a waived attorney could not be in two places at once; thus the thought of a waived attorney abstracting statewide could not have occurred.

The current state of the statewide attorney waiver issue is the direct result of the over-utilization of a "loophole" in the law which was created by the Supreme Court's decision in the Berger Case. In order to protect consumers, benefit the public as a whole, foster competition among abstractors¹, and increase the use of title guaranties throughout the state, Title Guaranty would be well served by doing whatever is possible within its power to return us to the original intent of the legislature.

¹ Abstractors are cautiously waiting on the sidelines to see how Title Guaranty addresses this issue. At stake is the title industry in Iowa as we know it. Title Guaranty will blossom when it encourages competition between abstractors by supporting the building of title plants. The more attorneys who are working statewide via carte-blanche waivers, the less incentive there will be for abstractors to invest in modernizing their existing title plants, or build new ones.

A sunset provision should be included in all "Permanent Waivers". Just as a Provisional waiver is for a specific period. Among the criteria, should be an examination of all of the original assertions on which the original waiver was based, to verify the need for a waiver still remains.

9.7(8)b(4)(b)v

This section would seem to indicate that a waived attorney could claim he would bring with him business that is not being performed by another participating abstractor in the county. If those clients do not materialize and the waived attorney begins "cherry-picking" the market, without ever meeting the criteria the waiver was based on, will Title Guaranty have any power (or desire) to correct the situation?

9.7(8)b(4)(b)vii

What is the standard for determination as to whether an attorney demonstrates the ability or inability to abstract under a waived attorney?

9.7(8)b(4)(a)

Since the conditions or circumstances justifying the granting of waiver may change over time, there is no implication that a waived attorney would need a successor. Consider this example: No title plant exists at the time an attorney is granted a waiver and the attorney chooses not to build one. One or more abstractors subsequently build a title plant in the county, participate in the Title Guaranty Program and meet or exceed Title Guaranty's Standards in Excellence criteria. In this instance, the public is well served and the need for a waived attorney is diminished.

9.7(12)

Currently the Title Guaranty Board has no established method to revoke a permanent waiver in the event (for whatever reason) a waived attorney needs to be removed from the program. These new rules contain such a provision. This provision should contain an ethics clause as well as an excessive claims due to inaccurate work clause. By the time an attorney is disbarred for ethics issues, the Title Guaranty program could find itself needlessly exposed to many risks that could have been avoided if it had the power to swiftly remove (or even stay the participation of) a waived attorney from the program for those additional reasons.

What test would be employed to determine the inadequacy of an "Alternative Search Method?"

Some of the informal comments previously provided to the board, have taken this opportunity to attack title plants. I offer the following in response.

Code of Iowa Section 16.91(5) states in part:

“ . . . 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. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program. . . . ”

Iowa Abstractors go to great pains to index instruments by legal description rather than Grantor or Grantee Name. The search process is essentially performed as each instrument is entered into the title plant, resulting in fast, accurate retrieval. That accuracy is the foundation of the Title Guaranty Program's unparalleled claims rate.

Section 16.91(5) makes no provision for abstractors to omit instruments from a title plants in cases where the instrument is improperly indexed by a county official. The mere fact that an instrument does not impart constructive notice unless properly indexed is at very best a mixed bag. There is no benefit to the public when a waived attorney relying on an alternative search method fails to find a properly executed, properly presented instrument because its indexing is deficient. That same public would see a similarity with this and an instance where a criminal is set free because a technical mistake was made during his arrest.

This premise would be more palatable if abstractors shared the belief that corrections are never made to the indexes. It has long been the practice of most abstractors to bring these types of errors to the attention to the Recorder or other official in order that our public records may remain pristine. In years past, a correction made to a physical index book would have been apparent. With the advent of computerized indexes, that is hardly the case, there is no way to know if the electronic index has been changed.

Many Recorders around the State are re-indexing millions of recorded documents electronically in order to provide them to CLRIS. It is inevitable that any number of these could be improperly indexed electronically, while at the same time remaining properly indexed in the original physical form, or vice-versa. A searcher operating under a waiver of the title plant requirement who did not examine both indexes and missed such an instrument as a result an alternative search method would find himself in a dubious position. The consumer affected by the resulting claim could hardly see Title Guaranty's waiver of the plant rules as protecting him. No one I've spoken with can answer whether the first or second record would be the valid one, since they would both be "the official record" indexed by the Recorder and located in the Recorder's Office.

A search of a Title Plant's tract index reveals all instruments recorded so an examining attorney has the opportunity to make the determination as to the affect of a particular document on behalf of his client. The legislature saw the superiority of this method an integral part of the requirements for participation in the Title Guaranty program, and this has been the established practice for the entire history of the Title Guaranty Program.

Many scenarios exist where properly indexed instrument will elude a waived attorney relying on an alternative search method:

- Prior to computerization of the Recorder's records, an affidavit explanatory of title would be indexed against the name of the Affiant as Grantor, with the name of the concerned party and property noted as a comment. A searcher relying on the "Direct Search" method of alternative search would be hard pressed to find such an affidavit, since the Affiant could be literally anyone.
- A deed, mortgage, easement, or any other instrument executed by a female after a marriage where the marriage occurred outside of the county where the real estate is located.
- Prior to computerization, an easement created by condemnation was typically indexed in the same manner as an affidavit above, except that in place of a comment, is typically found "See Record".

Prior to the 2001 repeal of Iowa Code Sections 558.50 and 558.51, Iowa Recorder's were required to maintain separate index books for each class of instruments.

1999 Code of Iowa Section 558.51 and 558.52 state:

558.51 – "Separate index books shall be kept for mortgages and satisfactions or releases of same, one for those containing descriptions of lots, and one for those containing land; and separate books for other conveyances of real estate, one for lots, and one for lands; and an index book shall be kept for powers of attorney, affidavits, and certified copies of petitions in bankruptcy with or without the schedules appended, of decrees of adjudication in bankruptcy, and of orders approving trustees' bonds in bankruptcy; all of above indexes to be arranged alphabetically as provided in section 558.52."

558.52 – "The entries in such book shall show the names of the respective grantors and grantees, arranged in alphabetical order. When such instrument is executed by a personal representative, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity, the recorder shall enter upon the index book the name and representative capacity of each person executing the instrument and the owner of the property if disclosed therein."

In Polk County the Title Guaranty waived attorneys employing an alternative search method, or a "Direct Search", assert that each of the abstracts prepared under their respective Title Guaranty Abstracting Numbers is a complete abstract of all matters affecting title to real estate described as contained in the public records of Polk County, Iowa. These abstracts also state that they are prepared in pursuant to Sections 614.29-.38 of the Code of Iowa.

To accurately perform a 40 year search in Polk County it is necessary to examine no less than 288 Deed Indexes, 288 Mortgage Indexes and 24 Miscellaneous Indexes (a total of 25 per year) for each search, until the point when computer indexing begins in 1992. Each of these indexes is contained on a microfilm reel. The searcher begins by checking the film reel key (examples attached) to determine the start position on the reel for a

particular search. Once the film reel is inserted in a device and positioned to the area containing the index information it can be searched. This process must be repeated for every month of every year using various film reels.

These machines are used by the public and various county employees and are not always available for use. Assuming the fastest searcher with uninterrupted access to a machine would require no less than 5 minutes to process each reel, a search of one year's indexes would require no less than two hours to complete.

I assert these searches are not being performed and Title Guaranty is exposed to an unnecessary level of risk as a result.

MORTGAGE INDEX		Key • 10	GRANTOR
A	.1		Book: 986
B	.9		Roll #IDX-017
C	.23		DEC 88
D	.35		
E	.41		
F	.46		
G	.58		
H	.63		
I	.72		
J	.78		
K	.82		
L	.87		
M	.92		
Mc	.105		
N	.108		
O	.115		
P	.118		
Q	.125		
R	.127		
S	.132		
T	.141		
U	.145		
V	.150		
W	.154		
X	.161		
Y	.163		
Z	.165		

MORTGAGE INDEX		Key • 11	GRANTEE
A	.1		Book: 986
B	.10		Roll #IDX-017
C	.22		DEC 88
D	.31		
E	.37		
F	.41		
G	.55		
H	.60		
I	.69		
J	.76		
K	.79		
L	.83		
M	.89		
Mc	.105		
N	.108		
O	.116		
P	.118		
Q	.125		
R	.127		
S	.131		
T	.140		
U	.143		
V	.151		
W	.155		

Microfilm Reel Key
Mortgage Index, Dec 1988

DEED INDEX		Key • 15	GRANTOR
A	.1		Book: 891
B	.4		Roll #IDX-030
C	.10		MARCH 82
D	.15		
E	.20		
F	.23		
G	.26		
H	.29		
I	.35		
J	.37		
K	.40		
L	.43		
M	.46		
Mc	.51		
N	.53		
O	.55		
P	.57		
Q	.60		
R	.62		
S	.65		
T	.71		
U	.74		
V	.76		
W	.79		
X	---		
Y	.84		
Z	.86		

DEED INDEX		Key • 16	GRANTEE
A	.1		Book: 891
B	.5		Roll #IDX-030
C	.11		MARCH 82
D	.16		
E	.21		
F	.24		
G	.28		
H	.32		
I	.38		
J	.40		
K	.43		
L	.46		
M	.50		
Mc	.55		
N	.58		
O	.61		
P	.63		
Q	---		
R	.69		
S	.73		
T	.79		
U	.82		
V	.85		
W	.88		

Microfilm Reel Key
Deed Index, March 1982

MISC		Key • 28	GRANTOR
A	.1		Book:
B	.6		Roll #IDX-042
C	.12		MISC 1984
D	.19		
E	.30		
F	.33		
G	.38		
H	.43		
I	.50		
J	.56		
K	.60		
L	.64		
M	.68		
Mc	.75		
N	.77		
O	.80		
P	.82		
Q	.93		
R	.95		
S	.99		
T	.105		
U	.109		
V	.112		
W	.114		
X	---		
Y	.121		
Z	.123		

MISC		Key • 29	GRANTEE
A	.1		Book:
B	.4		Roll #IDX-042
C	.10		MISC 1984
D	.15		
E	.19		
F	.22		
G	.26		
H	.29		
I	.34		
J	.36		
K	.39		
L	.42		
M	.46		
Mc	.50		
N	.53		
O	.56		
P	.58		
Q	---		
R	.63		
S	.67		
T	.74		
U	.77		
V	.79		
W	.81		

Microfilm Reel Key
Misc Index, Year 1984

RECORDER (Computer started 7-1-89)

Misc. Index (Begins 1872)

Affidavit Index (Begins March 1907)

Deed Index--run 1st

Mtg Index

Bk 1 _____ people's name
1872- _____ r.e. (Sec.Twp.Rng.)
1889 _____ "town name"
_____ subdivision

Bk 2 _____ people's name
1890- _____ r.e. (Sec.Twp.Rng.)
1900 _____ "town name"
_____ subdivision

Bk 3 _____ people's name
1901- _____ r.e. (Sec.Twp.Rng.)
1907 _____ "town name"
_____ subdivision

Bk 4 _____ people's name
1908- _____ r.e. (Sec.Twp.Rng.)
1930 _____ "town name"
_____ subdivision

Bk 5 _____ people's name
1931- _____ r.e. (Sec.Twp.Rng.)
1936 _____ "town name"
_____ subdivision

Bk 6 _____ people's name
1937- _____ r.e. (Sec.Twp.Rng.)
1940 _____ "town name"
_____ subdivision

Bk 7 _____ people's name
1941- _____ r.e. (Sec.Twp.Rng.)
1950 _____ "town name"
_____ subdivision

Bk 8 _____ people's name
1951- _____ r.e. (Sec.Twp.Rng.)
1956 _____ "town name"
_____ subdivision

Bk 9 _____ people's name
1957- _____ r.e. (Sec.Twp.Rng.)
3/1961 _____ "town name"
_____ subdivision

Bk 10 _____ people's name
4/1961- _____ r.e. (Sec.Twp.Rng.)
5/1971 _____ "town name"
_____ subdivision

Bk 11 _____ people's name
6/1971- _____ r.e. (Sec.Twp.Rng.)
6/1978 _____ "town name"
_____ subdivision

_____ Misc. Direct 7-1-78 to 6-30-84
_____ Misc. Indirect 7-1-78 to 6-30-84
_____ Grantor 7-1-78 to 6-30-84
_____ Grantee 7-1-78 to 6-30-84
_____ Grantor 7-1-84 to 6-30-90
_____ Grantee 7-1-84 to 6-30-90

Bk 1 _____ people's name
VFW _____ r.e. (Sec.Twp.Rng.)
room _____ "town name"
1917 _____ subdivision

Bk 2 _____ people's name
file cab. _____ r.e. (Sec.Twp.Rng.)
in VFW _____ "town name"
room _____ subdivision

Bk 3 _____ people's name
1927- _____ r.e. (Sec.Twp.Rng.)
1931 _____ "town name"
_____ subdivision

Bk 4 _____ people's name
1931- _____ r.e. (Sec.Twp.Rng.)
1939 _____ "town name"
_____ subdivision

Bk 5 _____ people's name
1/1940- _____ r.e. (Sec.Twp.Rng.)
6/1945 _____ "town name"
_____ subdivision

Bk 6 _____ people's name
7/1945- _____ r.e. (Sec.Twp.Rng.)
12/1950 _____ "town name"
_____ subdivision

Bk 7 _____ people's name
1951- _____ r.e. (Sec.Twp.Rng.)
1958 _____ "town name"
_____ subdivision

Bk 8 _____ people's name
1959- _____ r.e. (Sec.Twp.Rng.)
5/1971 _____ "town name"
_____ subdivision

Bk 9 _____ people's name
6/1971- _____ r.e. (Sec.Twp.Rng.)
6/1978 _____ "town name"
_____ subdivision

_____ St & Fed Tax Liens (3 bks, beg to 1989)
_____ Claimants Book (1 book)
_____ Index of Plats (3-ring binder, rural only)
_____ Index of Plats (Town plat, under counter)
_____ Death/Marriage
_____ UCC (drawer) .
_____ Articles of Inc.(by deed indexes)
_____ Corp. Book (includes ordinances under city names)

Towns and Lands

Bk 1 _____ name
_____ r.e.
Bk 2 _____ name
_____ r.e.
Bk 3 _____ name
_____ r.e.
Bk 4 _____ name
_____ r.e.
Bk 5 _____ name
_____ r.e.
Bk 6 _____ name
_____ r.e.
Bk 7 _____ name
_____ r.e.
Bk 8 _____ name
_____ r.e.
Bk 9 _____ name
_____ r.e.
Bk 10 _____ name
_____ r.e.
Bk 11 _____ name
_____ r.e.
Bk 12 _____ name
_____ r.e.
Bk 13 _____ name
_____ r.e.
Bk 14 _____ name
_____ r.e.
Bk 15 _____ name
_____ r.e.
Bk 16 _____ name
_____ r.e.
Bk 17 _____ name
_____ r.e.
Bk 18 _____ name
_____ r.e.
Bk 19 _____ name
_____ r.e.
Bk 20 _____ name
_____ r.e.
Only Lands
Bk 21 _____ name 1945-50
_____ r.e.
Bk 22 _____ name 1951-54
_____ r.e.
Bk 23 _____ name 1955-60
_____ r.e.
Bk 24 _____ name 1960-67
_____ r.e.
Bk 25 _____ name 1967-72
_____ r.e.
Bk 26 _____ name 1972-7/1/78
_____ r.e.

Towns

Bk 1 _____ name
Bk 2 _____ name
Bk 3 _____ name
Bk 4 _____ name
Bk 5 _____ name
Bk 6 _____ name
Lands
Bk 7 _____ name
Bk 8 _____ name
Bk 9 _____ name
Direct
Bk 10 _____ name
Indirect
Bk 10 _____ name
Direct
Bk 11 _____ name
Indirect
Bk 11 _____ name
Direct
Bk 12 _____ name
Indirect
Bk 12 _____ name
Direct
Bk 13 _____ name
Indirect
Bk 13 _____ name
Direct
Bk 14 _____ name
Indirect
Bk 14 _____ name
Direct
Bk 15 _____ name
Indirect
Bk 15 _____ name

Keokuk County Index List

Keokuk is less than 1/20 the size of Polk

For Road closings: Check Supervisor's Minute I
Later on the Order and Deed were filed in Recor
not filed right with Deed.

T:\Kathy\BK\Keokuk\2006\Old Book Search