

Loyd Ogle
Director, Title Guaranty Division
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Des Moines, IA 50309

Loyd,

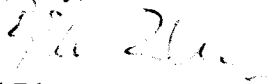
I and a good number of my constituents have great hope that this is a starting point for Title Guaranty, Iowa Land Title Association and the Bar Association to begin working towards some changes that will benefit us all.

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

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

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

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 Recorder's Office
not filed right with Deed.
T:\KathyB\Keokuk\2006\Old Book Search