

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.
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 abstractors. 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