

TITLE GUARANTY DIVISION

ABTRACTOR APPLICATION FOR WAIVER (AMENDED)

STATE OF IOWA)

COUNTY OF POLK)

TELEPHONE (515) 222-9900

NAME OF APPLICANT: Charles W. Hendricks

BUSINESS ADDRESS: 1701 – 48th Street, Suite 290, West Des Moines, IA 50266

I, the above-named Applicant, do hereby submit for consideration the following information concerning my request for waiver of abstractor participation requirements of the use and ownership of a current 40-year tract index for the Title Guaranty Program:

1. Number of years at present location: I have been at the present location since December of 2006. Before starting my own practice, I was with Wasker Dorr Wimmer & Marcouiller, P.C., from April 2003 through December of 2006. I have been a member of the Iowa State Bar Association since 1999.
2. Number of years abstracting experience: My practice has concentrated on real estate law since April of 2003. During that time I have conducted numerous searches of judicial, bankruptcy and land records indices. All searches were conducted on behalf of clients needing to learn of potential title issues regarding various properties. During my employment with Wasker Law Firm, I examined hundreds, if not thousands of abstracts. Also, my current employees have several years of abstracting experience.
3. Annual volume of business (gross receipts): Unknown. I have not been in business on my own for an entire year. An estimate of total receipts is in excess of \$200,000.
4. Number of abstracts updated last year: 0. However, my staff abstracted approximately 3,000 titles throughout the State of Iowa last year.
5. Percent of abstracting business in your trade area: Abstracting will account for approximately one-fourth ($\frac{1}{4}$) of my law practice. The remaining three-fourths ($\frac{3}{4}$) will be from closings, title opinions/examinations, probate and litigation files.
6. Turn-around time for completing abstracts: I anticipate 24-48 hour turn-around time for refinance title searches and 24-72 hour turn-around on abstracting updates. Not having a title plant will require me to sub-contract all root of title abstract requests.
7. Number of employees under your supervision: I currently have 7 employees.
8. Amount of Errors and Omissions coverage: My current Errors and Omissions coverage is 1 million/2 million, well in excess of the Title Guaranty required minimum.

9. Is there another abstractor serving the same geographic area who has a current 40-year tract: Yes. I am requesting a statewide abstracting waiver, and there currently exist certified abstractors in each county.

Using the space provided, describe the following and attach any appropriate supporting information:

- A. Your intentions to develop a 40-year tract index: None. A title plant is cost prohibitive and can exceed several million dollars for larger counties. To create a title plant in every Iowa County would probably approach at least 50 million dollars. This applicant has recently started his own practice, leaving Wasker Dorr Wimmer & Marcouiller, P.C., and is the sole source of revenue for his family (wife and two children). This applicant is a sole practitioner and not partnered with any other attorney, and has already expended most asset reserves in the implementation of his new practice and real estate title & closing business, which includes staff of 8 individuals and two offices. To facilitate the start up, this applicant has already obtained a business line of credit and has been informed by the bank that he is unable to secure any additional business financing.
- B. Hardship that will be created by not participating in the Title Guaranty Program: Title Guaranty and participating attorneys face 3 very significant challenges with the existing system. First, title insurance companies offer customers a wash agreement. Under the terms of the wash agreement, any transaction that does not close is not billed to the requester of the title search. Where abstractors refuse to offer a wash agreement, a participating attorney has to either eat that abstracting cost or pass it on to the client. If he chooses the former, he is faced with paying out a few thousand dollars a month in additional expenses. If he chooses the later, the client will simply select title insurance and not pay this cost. Through the date of this amended application, this applicant has paid out nearly \$10,000.00 to abstractors for title searches on mortgages that have not closed.

Second, deed forward lien searches on refinance transactions take between 72 hours and as long as 10 days in some counties. Title insurance companies offer their title with 24-hour turn-around time. Again, a participating attorney who supports Title Guaranty has difficulty convincing clients the additional delay is a good thing. Without an ability to control the time needed for abstracting, a real estate attorney's practice is literally at the mercy of the abstracting company.

Last, there is no continuity for the pricing of various abstracting services throughout the state. Refinance lien searches can cost anywhere from \$60 to \$200, with some abstractors charging for post closing searches and others not. Also, these additional searches can cost anywhere from \$0 to \$100. Compound that with charges for updating abstracts, gap searches and other searches/services and the pricing disparity from county to county is significant. Title insurance companies always offer a flat fee. Without continuity in pricing, it is difficult to promote Title Guaranty, unless the attorney offers a comprehensive flat fee for title. At which time, if an attorney markets a \$300 flat fee rate (the pricing for most title insurance companies doing a business within the State) it actually costs the attorney money to do business in some Iowa counties.

A participating real estate attorney must have the ability to conduct his own abstracting. Otherwise, because of the competitive disadvantage, his or her client will choose title insurance. This creates a personal hardship on myself, individually, as I will continue to lose clients and income as a result of my competitive disadvantage. However, the hardship created by this extends beyond personal hardship, and ultimately translates to Title Guaranty/The State of Iowa missing out on thousands to millions of dollars.

As indicated above, I recently started my own law practice and real estate title & closing business. The sole source of my family's income is my real estate title and closing business, with a very small percentage of revenue derived from probate files and litigation cases. To begin my business, which includes staffing and opening two offices, I have expended almost all of my family's asset reserves. Also, I have taken out a business line of credit and have been informed that I am unable to secure any additional financing.

To create title plants in all 99 counties and meet my clients' needs with respect to their title requests, I would be required to secure financing for several million dollars, possibly exceeding \$50,000,000.00. The majority of this money will be paid to the county recorders as copying expense. Each county recorder charges at least \$.50 per page copied. Most County recorders are unaware of the total number of pages recorded in a given year; however, in Polk County one can reach a fairly close estimate:

Year 2006: Beginning Book #11469 Ending Book #12013 Total Books 544

As such, the copying expense for the Year 2006 *by itself is a quarter of a million dollars.*

Each Book at the Polk County Recorder contains 1,000 pages. The Polk County Recorder charges \$.50 per page for each copy. During the 1950's, the Polk County recorder was at Books in the 2500's (the 1950s is a reasonable starting point for most 40 year title requirements). The Polk County Recorder is currently in Book 12169. As such, this yields a result of approximately 9,570 books since the 1950s, which in turn translates to approximately 9,570,000 pages to be copied. At fifty cents per page copied, I would incur a copy expense for Polk County of \$4,785,000. This is an up front charge before I can do even one abstract. Assuming that Polk County represents about 1/5 of the recorded documents in the State (a fairly conservative estimate), I would have a copy expense, up front, of almost \$24,000,000.

Assuming for sake of argument I was able to obtain unsecured financing for \$24,000,000, and I was able to find that financing at 9% the resulting monthly payment for a 10-year amortization (again a favorable term as most business lines are required to be repaid in less time) is \$304,021.86. Again, this is just for the copying of the documents and does not include the additional cost of putting the documents into a searchable title plant and tract index. My monthly revenues currently amount to just over 1/10th of this amount, leaving a monthly operating loss well exceeding \$250,000.00. This financial hardship is excessive and unwarranted, and by itself qualifies as undue. The hardship is excessive in that I lack the ability in anyway to secure financing for or pay out of pocket the copying expense of several million dollars. This hardship is also unwarranted in it is unnecessary, in that with the advent of technology and the on-line public access to country recorder records a person may conduct grantor/grantee searches without the need of a title plant.

The additional hardship created by this scenario is simply the time to create the title plant in each county. For Polk County, approximately 9,570,000 pages have to be copied. Prior requests for abstracting waivers in counties such as Black Hawk have estimated it would take 2 years to create the title plant. Considering Polk County is larger than Black Hawk County, the time required could be longer. This delay would be such that even if I were able to obtain the financing, I would be making payments on the financing for two years prior to ever receiving one dollar in abstracting revenue. Under the above financing scenario, this translates to payments totaling in excess of \$7,000,000.00, for copy expense alone, prior to ever being able to do even 1 abstract in the larger counties.

As previously stated, the requirement of a title plant in each of the counties constitutes an undue hardship, on several levels. First, the financial hardship of incurring millions of dollars in debt before ever being able to conduct an abstracting search. Second, the financial hardship of making monthly payments exceeding \$7,000,000 to make copies, without being able to conduct any search in that county until all of the copies are completed. Third, the hardship of time in possibly taking in excess of 2 years in larger counties to create a title plant.

When the legislation was passed requiring title plants, the legislature could not foresee the larger counties recording a half million copies a year. The legislature also could not foresee the advent of technology and the ready on-line availability of these documents. The above hardships are unwarranted and grossly excessive, mostly on account of the prohibitive cost and time associated with creating title plants, but also in the lack of needing a title plant to effectively search title in Iowa.

- C. Public interest that will be served by granting a waiver: If I am granted an abstracting waiver, I will offer wash agreements, flat pricing regardless of county and faster turn-around times. I also believe my competitive pricing will place a downward pressure on other abstractors throughout the state and in the end, provide title to consumers at a lesser cost than currently exists. As I offer this, other county abstractors will have to do the same to compete. Almost all of the counties have no more than 2 abstractors, and even in the counties with multiple abstractors there is not the force necessary to effectuate pricing change, faster turnaround and wash agreements. In most counties with multiple abstractors, the pricing for services varies by about \$25. As indicated above, I believe these are the three largest hurdles with the current Title Guaranty product and by offering this across multiple counties the Title Guaranty product will be strengthened through the process of open competition. By strengthening Title Guaranty and lowering title costs, the public benefits from less expensive title, and the many attributes of the Title Guaranty program and benefits passed along to the public will continue to grow.

Additionally, large lenders are seeking uniform pricing throughout the State. Recently, Wells Fargo Financial attempted to have abstractors in each county agree to a set fee and offer partial wash agreements for their statewide title needs. Wells Fargo Financial currently uses title insurance to insure its mortgages. The attempt to secure their abstracting needs failed as abstractors in approximately 30 counties failed to meet Wells Fargo Financial's needs. This business would amount to approximately 2,000 searches a year, with 50-60% of those searches closing and resulting in premiums for Title Guaranty. By not being able to secure the abstracting needs, Title Guaranty stands to lose in excess of \$100,000.00 in revenue, and Wells Fargo Financial may continue to utilize title insurance in our State. Without statewide abstractors able to offer standardized pricing and wash agreements, lenders like Wells Fargo Financial are unable to effectively utilize Title Guaranty and the public suffers. By granting this waiver request, the public is served both by additional revenue to Title Guaranty, but also less expensive title coverage.


If the Board grants this request, it is facilitating Title Guaranty's Mission Statement:

The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state.

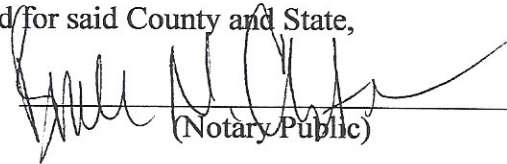
Iowa Title Guaranty Division Rule 9.2.

By allowing attorneys to participate in the abstracting system, Title Guaranty is assuring abstractors with knowledge of not just abstracting, but also title standards and legal rules associated with real estate transactions. Where any person with any background can own a title plant with tract index and abstract, a licensed attorney is required to complete ongoing continuing legal education courses and maintain the highest ethical standards to remain licensed. By continuing to replace attorneys leaving the abstracting field who previously were either waived or grand fathered into the abstracting system, with new abstract-attorneys can help continue the abstract-attorney title opinion system and maintain the integrity of the land-title transfer system Iowa currently enjoys.

I affirm that the above information is true and correct.


Charles W. Hendricks

Subscribed and sworn to before me, a Notary Public, in and for said County and State,
This 2nd day of May, 2007.


(Notary Public)



BROOKE N. CHRISTENSEN
COMMISSION NO. 729543
MY COMMISSION EXPIRES
JULY 19, 2007