IOWA TITLE GUARANTY DIVISION

IN RE: APPLICATION FOR A TITLE PLANT AND TRACT INDEX WAIVER BY CHARLES W. HENDRICKS	: : :	REPLY BRIEF BY CHARLES W. HENDRICKS

The undersigned, Charles W. Hendricks, as Applicant for a Title Plant and Tract Index Waiver, in support of my waiver request do hereby submit the following Reply Brief.

I. LEASING

Title plants do not currently exist in every Iowa County. However, this application is for a statewide waiver allowing me to abstract in all 99 counties. As such, this applicant cannot lease something that does not exist in the counties where there is not a title plant. Also, in the counties where there are title plants, the undersigned would be required to incur the expense, staffing, and oversight of leasing 80+ title plants. This proposal is so implausible that the inability to achieve this result is demonstrated without argument.

II. AVAILABILITY OF TITLE GUARANTEES THROUGHOUT THE STATE

The ILTA mistakenly concludes that the waiver request is not based on the second prong of section 16.91(5), which allows the granting of a waiver if "absolutely necessary to ensure the availability of title guarantees throughout the state." This is not the case and this argument is presented in the application and supporting materials.

As put forth in the waiver requests, national lenders like Wells Fargo are unable to utilize Title Guaranty because they are unable to obtain standardized pricing at the abstracting level. As such, title guarantees are not available throughout the state to Wells Fargo and similar lenders seeking that standardized pricing. It is only through an attorney-abstractor who is able to offer standardized abstracting statewide that lenders like Wells Fargo will be able to utilize Title Guaranty for its title policies. As such, this waiver request is "absolutely necessary to ensure the availability of title guarantees throughout the state" for those brokers and lenders seeking standardized pricing and turnaround times.

III. HARDSHIP

The ILTA Brief argues only two hardship arguments were raised in the applicant's waiver request; however, additional hardships were raised throughout the materials. Those hardships include the time associated with the creation of title plants; the inability to determine a firm cost for the creation of title plans in almost every county (most county recorders are unaware of the number of documents filed each year, let alone the number of pages); the hardship in being required to establish title plants in rural Iowa counties where there are not currently title plants and the population will never support the maintenance cost let alone start-up cost of a title plant; competitive disadvantage with existing abstractors having large market share and the applicant having minimal business in the various counties that do not justify the creation of a title plant. Each of these hardships has been raised and serves as a basis for the waiver application.

IV. CLEAR PUBLIC INTEREST—ON-LINE SEARCHES

The ILTA goes to great lengths to discredit on-line searches. Counsel for the ILTA quotes the Iowa Court Information System web page disclaimer, and then proclaims, "Any reliance on such internet-based information, to the exclusion of utilizing up-to-date, certified abstracts from forty-year title plants, cannot be in the public interest." Brief and Argument of Intervenor Iowa Land Title Association at 8 (hereinafter "Brief"). Apparently, the ILTA failed to advise their counsel with their web page and the public proclamation contained thereon, which provides "In the early 1990s the State of Iowa created the Iowa Court Information System linking all judicial districts with the state office in Des Moines. Searches of names can now be done over the Internet from title offices at any time." See http://www.iowalandtitle.org/about_us_history1.cfm. It seems the ILTA is either openly advocating search techniques that it now believes "cannot be in the public interest," or it is being somewhat hypocritical. Abstractors currently search ICIS for information related to judgments. If title-plant abstractors are searching in this manner, how can it now be contrary to public interest?

Also, many abstractors are now receiving their title plant updates electronically, without physical copies ever being made. This electronic information from the county recorder is the same as the electronic information being made available on the Iowa Land Records. However, when this electronic update is sent electronically to a title-plant abstractor, and stored electronically on the title plant server (instead of the same storing on the State's server) that is in turn electronically searched for abstracting purposes it suddenly becomes more reliable. This argument lacks merit and is again contrary to the

high quality work product given by attorney-abstractors employing on-line searches throughout our state right now.

V. CLEAR PUBLIC INTEREST—TITLE GUARANTY AND COMPETITION WITH TITLE INSURANCE

Counsel for the ILTA also attempts to put forth the notion that Title Guaranty was not created to compete with title insurance, actually arguing the legislature was seeking to create something that was only 'acceptable' and not competitive. This, in one small paragraph, misstates the entire existence of Title Guaranty. If Title Guaranty was not created to compete with title insurance, why even be mindful of the secondary market? Why has Title Guaranty recently implemented the Rapid Certificate Program, Form 900 streamlined search product for refinances and slashed its policy fee? Why has Title Guaranty initiated payment to the participating issuers of title? From the onset, Title Guaranty has strived to not just be acceptable, but also compete with title insurance on every level. Title Guaranty offers a far superior product and by granting a waiver that increases the volume of Title Guaranty policies to the detriment of its competitor, title insurance, a clear public interest is met and furthered. According to the statistics provided in the 2006 Edition of *Demotech Performance of Title Insurance Companies*, claims on title insurance policies far exceed claims through Title Guaranty. For example, some insurance companies conducting business in the State of Iowa, such as Chicago Title (29.87% claims rate) and LTIC (38.06% claims rate) lead the industry that on average and as a whole sees significantly higher title claims rates. By bringing lenders currently utilizing title insurance into the Title Guaranty arena there will be a significant reduction to total claims in our State. Clearly, this is in the public's interest.

VI. CLEAR PUBLIC INTEREST—CHANGING MARKETS

Lost in the ILTA Brief is any acknowledgment to the changing landscape of loan origination. During the 1980s local banks originated nearly all loans. Mortgage brokers and national lenders were, for the most part, unheard of. The local lenders relied upon local attorneys and abstractors to meet their title needs. At this time, full abstract updates were still required for refinance transactions. However, the 1990's saw the consolidation of banks through takeovers and mergers, as well as the significant increase in mortgage brokers, so much so that it is estimated over half of all loans are originated by or for out-of-state lenders.

The ensuing impact to Title Guaranty is that these brokers and national lenders have interests that cannot be supported by the abstracting model created in 1986, when local originators were the norm. These lenders and brokers are seeking to do loans across all Iowa counties, at standard prices with standard turnaround for their title assurance needs. Currently, there are 99 different counties, each of which possesses at least one participating abstractor. That is over 99 different pricing schedules and over 99 different turnaround times. The only current alternative for national lenders and mortgage brokers seeking standardized title is title insurance. Title Guaranty has recognized this changing landscape by reducing title policy fees, initiating the form 900 search product for refinance transactions, the Rapid Certificate program and the now fully web integrated title procedure.

The ILTA's Brief argues that the granting of this waiver request will increase claims and therefore, cannot be in the public interest. However, if these lenders and brokers continue to have no alternative through Title Guaranty they will remain with title

insurance. As addressed above, the numbers demonstrate claims rise significantly when title insurance is used instead of Title Guaranty. This is the case even though there are over 50 attorney-abstractors in our State acting as participating Title Guaranty abstractors without title plants. The numbers do not lie.

The ILTA argues the Iowa's title is the polestar to title because participating abstractors maintaining title plants. However, this simple argument fails to acknowledge several important facts that irrefutably demonstrate Iowa's elite title system is such for reasons in addition to title plants.

First, several Iowa counties do not have title plants. Contrary to many of the letters attached to the ILTA brief, each county has a participating Title Guaranty abstractor; however, many of the rural counties do not have a title plant. Also, one large county (Scott) has many non-title plant attorney-abstractors. If the ILTA's Brief had merit, and if attorneys who abstract without title-plants lead to the erosion of title and additional claims, why is there not a cluster of title claims in these attorney-abstractor counties? Why is Scott County, where the largest concentration of non-tile plant abstracting-attorneys exists, not the cesspool of Iowa title? Clearly, the ILTA's argument is pure conjecture and not supported by any facts, nor supported by the last 20+ years of attorney abstracting within the State.

Second, the current Title Guaranty system requires the involvement of a participating attorney who must adhere to the 40-year Marketable Title Act. It is the attorney review, more so than a title plant, which ensures the quality of Iowa Title. When coupled with the statistical data and last 20+ years of over 50 attorney-abstractors, this irrefutably demonstrates the significant increase in title claims by title insurance

companies corresponds to the attorney review being removed from the transaction. As many letters in opposition to this waiver request confirm, title insurance is often cheaper because the attorney review is removed.

VII. SECTION 16.91(5) GENERALLY

The ILTA argues "A review of section 16.91(5) reveals an understanding of the deep appreciation the legislature had for the land-title transfer system existing in Iowa upon its passage in 1985 and the public interest in maintaining its integrity." Brief at 5. This argument is 100% in support of this applicant's waiver request.

The legislature did clearly understand the existing land-title system and the public interest in maintaining its integrity, and it was with that deep appreciation, understanding and intent to maintain the integrity that the legislature grandfathered all attorney-abstractors without title plants as participating Title Guaranty abstractors. All that was required for an attorney-abstractor to participate as a Title Guaranty abstractor was a showing that the attorney continuously abstracted from the passage of the 1986 statute until the attorney's application to Title Guaranty. Clearly, had the legislature believed attorney-abstractors were detrimental to the Iowa land title system it would have prohibited their participation as Title Guaranty abstractors. Clearly, had the legislature believed the title plant was an integral component for attorney-abstractors it could have required that each grandfathered attorney establish a title plant in time. Instead, the legislature chose to welcome the attorneys into Title Guaranty.

The ILTA Brief also relies on the proposition that "by coming down on the side of requiring these [title plant] costs, the legislature clearly intended that the integrity of the land-title system be maintained at such costs." Brief at 6. However, this is once again

contrary to the remainder of the same code section wherein the legislature grandfathered all attorney-abstractors without title plants. Had, as the ILTA argues, the legislature intended these costs by incurred to maintain the integrity of the land-title system it would not have grandfathered attorneys who did not have to incur such costs, or as stated above, it would have required the creation of title plans within a certain time period.

Section 16.9(5) also shows incredible foresight by the legislature. The legislature understood that title demands in Iowa would change over time. It was with this incredible foresight that the legislature incorporated the waiver provision for attorneys seeking to abstract without title plants. Arguably, a situation like this applicant's waiver request to provide standardized statewide pricing and turnaround to brokers and national lenders is exactly the scenario anticipated for the triggering of the granting of a waiver. It is only through attorneys that such abstracting can be made available throughout the State.

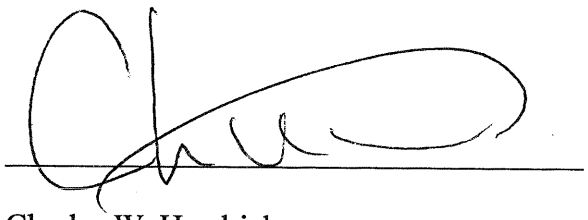
The legislature believed attorneys were qualified to abstract without title plants. The legislature exempted attorneys from the requirements and the costs of title plants, and inserted a specific provision where Title Guaranty could waive the title plant requirements for attorney-abstractors. This was intentional and demonstrates the legislative intent in treating abstracting-attorneys differently than title plants.

VIII. CONCLUSION

This applicant has met he showing of an undo hardship on several levels. This applicant has also demonstrated that granting this waiver request absolutely necessary to ensure the availability of title guarantees throughout the state. Also, as a last note, granting the waiver and bringing national lenders currently using title insurance into the arena of Title Guaranty is clearly in the public's interest. For all of the reasons previously

stated in the Application, Argument and this Reply, the undersigned's wavier request should be granted.

Respectfully submitted:



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