

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