

Report of the Ad Hoc Committee Appointed by the Board of Governors
to Respond to the Draft Bill by the Iowa Land Title Association to
Amend Iowa Code Section 16.91

January 7, 2008

Respectfully submitted by the Ad Hoc Committee

Charles Augustine, Waterloo
Professor Patrick Bauer, Iowa City
Mark Hanson, Des Moines
Rachelle Johnson, Montezuma
George Madsen, Sioux City
Patrick Murphy, LeMars
Timothy Gartin, Ames, Chair

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Procedure and Recommendations of the Committee

Prepared by Timothy Gartin, Chair

On December 4, 2007, I made a presentation to the Board of Governors regarding the implications of an amendment to Iowa Code section 16.91 (included as Exhibit “A”) by the Iowa Land Title Association (hereafter ILTA). The Real Estate & Title Law Section Council normally reviews bills with real estate implications; however, I believed this bill was unique because of the scope of its impact and the division it would cause among members of the Bar. My belief was that such a bill required an ad hoc committee for such a review. This approach would provide additional creditability to the manner in which the Board of Governors considered this issue. The Board of Governors concurred and directed Bar President Joel Greer to appoint such a committee.

Joel appointed the Ad Hoc Committee (hereafter Committee) in a manner that would consist of two attorneys who provide abstracting services without the use of a title plant (namely, Charles Augustine and Roger Huddle), two attorneys who are involved with abstracting (namely, Rachelle Johnson and Patrick Murphy), and three attorneys who are intimately involved with real estate, but who are not involved with providing abstracting services by either means (namely, George Madsen, Professor Patrick Bauer, and Mark Hanson). I was appointed to chair the committee.

A telephone conference was held on December 14, 2007 to agree upon a schedule of briefing, discussions, and presentations. On December 17, a telephone conference was held to surface the arguments in favor of and in opposition to the bill. I e-mailed the Real Estate Section a copy of the bill and the Berger decision (included as Exhibit “B”) and asked for input on the bill. (Eight attorneys recommended opposing the bill and five wrote in support of the bill.) Briefs were submitted on December 21 by Augustine and

Huddle in opposition to the bill (included as Exhibit “C”) and by Johnson and Murphy (included as Exhibit “D”). On December 24, a telephone conference was convened to discuss the briefs and to receive presentations from Mike St. Clair and David Rubow on behalf of the ILTA; from Loyd Ogle on behalf of Title Guaranty; and attorney Mitch Taylor from Burlington, who requested an opportunity to address the committee. (Mr. Taylor provides abstracting services without a title plant and opposes the bill). A court reporter recorded the presentations.

On December 31, the final telephone conference was held. The committee received a presentation from Jim Carney and Dwight Dinkla regarding the historical aspects of the Title Guaranty program and the dynamics of the politics surrounding the relationship between the ISBA and the ILTA. (Mr. Carney was very careful to not offer his own opinion as to the course the Bar should take in this matter.) Following this presentation, a discussion of a proposal from Patrick Bauer took place. Professor Bauer’s proposal would limit waived attorneys to abstract only in those counties which Title Guaranty determines lack adequate abstracting, therein addressing the ILTA’s concern with attorneys being able to abstract anywhere in the state, yet giving attorneys the opportunity to provide abstracting services in additional counties.

We then discussed the procedure for voting. Unfortunately, it had been my understanding that all of the members were to have a vote except for me. Upon subsequently reviewing an e-mail from Joel Greer to the committee, this was an error on my part. (However, as discussed herein, this was not a fatal error.) George Madsen also expressed his reservations regarding the implications of Section X of the By-Laws of the

Real Estate & Title Section.¹ This concern is resolved by disregarding the votes of Augustine, Huddle, Johnson, and Murphy.

A motion was then offered to oppose the ILTA bill. The motion was passed four votes to three. Those voting in favor of the motion were Madsen, Hanson, Augustine, and Huddle and those opposed to the motion were Bauer, Johnson, and Murphy. If those who should not have voted are excluded, the motion still passed on a vote of two to one. Thus, it is the recommendation of this committee that the Board of Governors should oppose the ILTA bill. The rationale for this decision is encompassed by the brief written by Augustine and Huddle (again, Exhibit “C”).

I entertained additional motions. George Madsen expressed his concern that anything beyond the mandate of what position to take as to the ILTA bill would be unauthorized. I replied that I believed that the Board of Governors would value any additional input from the committee given its concerted deliberations on the matter. Two other motions were offered and passed by the committee.

First, a motion was offered to encourage the ISBA to strongly recommend that the Title Guaranty Division adopt clearer administrative rules with respect to how waivers would be given to attorneys (or perhaps others) seeking to offer abstracting services without the use of a title plant. The concern is that the decision to grant Charles Hendricks a waiver (included as Exhibit “E”) failed to offer an adequate rationale. This motion was passed six to one, with Madsen being the vote against. Again, if those who should not have voted are excluded, the motion still passed on a vote of two to one.

¹ Section X states: “No member of the Section shall knowingly participate in, debate, or vote upon any matter in which the member, a client, or a relative by consanguinity has a financial or other pecuniary interest.”

A second motion was offered to include the proposal by Patrick Bauer with the committee's report to the Board of Governors for its consideration. This vote was passed on a vote of five to two, with Madsen and Augustine voting against. Similarly, if those who should not have voted are excluded, the motion still passed on a vote of two to one.

I regret the unnecessary confusion caused by my misunderstanding of who would be voting on this committee. Fortunately, the addition of the other votes did not alter the outcome of the three motions passed by the committee. The Board of Governors may disregard the two additional recommendations passed by the committee if viewed as unauthorized.

To summarize, the committee recommends the following:

1. The ILTA bill should be opposed.
2. The ISBA should strongly recommend that the Title Guaranty Division adopt clearer administrative rules with respect to how waivers would be given to attorneys (or perhaps others), who seek to offer abstracting services without the use of a title plant.
3. The proposal by Patrick Bauer is included for the Board's consideration as Exhibit "F."

On behalf of the committee, I wish to thank President Joel Greer and the Board of Governors for the opportunity to assist with a decision of such importance to the Bar. We believe the level of scrutiny given to this issue is warranted and consistent with the Bar's goal of serving the legal profession and the public. It is our hope that this report assists the Board with its deliberation.