

CHAPTER 9
TITLE GUARANTY DIVISION

265—9.1(16) Purpose. This chapter describes the mission, organization, programs and operations of the title guaranty division (division) of the Iowa finance authority (authority), including the office where and the means by which interested persons may obtain information and make submissions or requests.

265—9.2(16) Mission. 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. Surplus funds in the title guaranty fund shall be transferred to the authority's housing program fund after providing for adequate reserves and for the operating expenses of the division.

265—9.3(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“*Certificate*” means the title guaranty certificate including any part or schedule and any endorsements.

“*Commitment*” means the commitment to insure title including any part or schedule and any endorsements.

“*Electronic record*,” for the purposes of the title guaranty program, means a record created, generated, sent, communicated, received, or stored by electronic means that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“*Participant*” means a participating attorney and a participating abstractor.

“*Participating abstractor*” means an abstractor who is authorized to participate in the title guaranty program and who is in full compliance with the abstractor's participation agreement, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements given by the division.

“*Participating attorney*” means an attorney who is authorized to participate in the title guaranty program and who is in full compliance with the attorney's participation agreement, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements given by the division and who is not subject to current disciplinary proceedings by the Iowa supreme court.

“*Residential property*,” for the purposes of the title guaranty program, means residential real estate consisting of single-family housing or multifamily housing of no more than six units.

“*Supervision and control*,” for the purposes of the title guaranty program, means that a participant's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant, shall comply with the requirements of the contracts, forms, manuals, instructions, and guides and any other written or oral instructions given by the division. A participant shall be liable to the division for loss or damage suffered by the division resulting from acts or omissions of the participant's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant as an agent of the division as though the act or omission were that of the participant.

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's Web site address is www.ifahome.com/partner_tgd.asp, and the division's telephone and facsimile numbers are as follows: (515)242-4989 (general telephone number); 1-800-843-0201 (toll-free telephone number); (515)242-4890 (TTY); and (515)242-4994 (facsimile).

9.4(2) Division board and staff. The powers of the division are vested in and exercised by a board of five members, appointed by the governor and subject to confirmation by the senate. The board membership includes an attorney, an abstractor, a real estate broker, a representative of a mortgage lender, and a representative of the housing development industry. A chair and vice-chair are elected annually by the members, generally at the first meeting following July 1 of each year, which is the beginning of the fiscal year. Division staff consists of a director and additional staff as approved by the executive director of the authority.

9.4(3) Division director. The executive director of the authority appoints the director of the division. The division director shall be an attorney licensed to practice law in the state of Iowa and in good standing with the Iowa supreme court at all times while acting as the division director. The appointment of and compensation for the division director are exempt from the merit system provisions of Iowa Code chapter 19A. The division director serves as an ex-officio member of the division board and as secretary to the division board.

9.4(4) Meetings. Meetings of the division board are held quarterly on the date and time determined by the board. Meetings of the division board may also be held at the call of the chair or on written request of two members. The division will give advance public notice of the specific date, time and place of each division board meeting, and will post the tentative agenda for each meeting at least 24 hours before commencement of the meeting at the division office and at the main office of the authority, as well as on the authority's Web site. Meetings may occasionally be conducted by electronic means. Any interested party may attend and observe board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the board meetings are available for viewing at the division's office or via the authority's Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division board. The majority shall not include any board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

265—9.5(16) Location where public may obtain information. Requests for information, inquiries, submissions, petitions and other requests may be directed to the division at the address set forth in subrule 9.4(1). Requests may be made personally, by telephone, mail, E-mail or any other medium available.

265—9.6(16) Title guaranty program.

9.6(1) General. The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty certificates. Title guaranty certificates may be issued by the division or by participating attorneys.

9.6(2) Participating attorneys. An attorney licensed to practice law in the state of Iowa may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an attorney's participation agreement.

a. Authority of participating attorney. A participating attorney is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the attorney's participation agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating attorney under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating attorneys, agents, or representatives of the division to transact the business of opining on titles to real estate or issuing commitments or certificates and is further subject to the right of the division to appoint other participating attorneys.

b. License. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

c. Errors and omissions insurance. A participating attorney shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

d. Participation fees. A participating attorney shall pay participation fees in such amounts and at such times as the division board may set from time to time by resolution. Participation fees set by the division board are subject to the approval of the authority board.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of attorney participation fees at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

e. Training. A participating attorney shall complete division forms and procedures training prior to issuing title guaranty certificates as an agent of the division.

f. Underwriting determinations. A participating attorney shall make all underwriting determinations prior to or at the closing. If the participating attorney does not attend the closing and is not available by telephone during the closing, all underwriting determinations must have been made by the participating attorney issuing the opinion, commitment or certificate prior to closing. For purposes of this rule, the term "underwriting determinations" includes, but is not limited to, insuring access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information. A participating attorney who causes or allows an erroneous underwriting determination to be made by someone other than a member of the division's legal staff or the participating attorney who issued the opinion, commitment or certificate shall be strictly liable to the division for loss or damage the division may suffer as a result of the erroneous underwriting determination.

A participating attorney shall make all underwriting determinations arising out of the issuance of an attorney title opinion or a title commitment using both:

1. Generally accepted and prudent title examining methods; and
2. Procedures implemented by the division and outlined in these rules, manuals, and guides and any other written or oral instructions or requirements given by the division.

Any underwriting determination about which there may be a bona fide difference of opinion among local lawyers and that is not specifically covered by materials provided by the division shall be approved by division legal staff.

g. Title files. A participating attorney shall maintain separate title files or maintain client files in such a manner that information pertaining to activities of the participating attorney as an agent and underwriter for the division are readily available to the division. A participating attorney shall maintain title files and the title portion of client files for a period of ten years after the effective date of the certificate or certificates.

h. Forms. The division will provide forms to a participating attorney for use in acting as an agent of the division. A participating attorney may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division.

A participating attorney who obtains serialized forms from the division must maintain a forms register, in a format approved or supplied by the division, in which the participating attorney shall enter a record of and show the disposition of all serialized forms. In addition, the participating attorney shall:

1. Return the original of any damaged, spoiled, or otherwise unusable serialized form to the division;
 2. Return the original of any unused serialized form to the division at the request of the division;
- and
3. Not transfer or attempt to transfer unissued serialized forms to another participating attorney or other person or entity unless authorized in writing by the division.

If a participating attorney fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participating attorney until the participating attorney complies with the requirements of this rule to the satisfaction of the division.

The participating attorney shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participating attorney to account for any form supplied by the division, or the failure of the participating attorney to comply with the requirements of this rule.

i. Certificate amount limitations. A participating attorney shall obtain the written authorization of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this rule is not obtained through the act or omission of the participating attorney, the participating attorney shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

9.6(3) Participating abstractors. An abstractor or abstracting concern may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an abstractor's participation agreement.

a. Authority of participating abstractor. A participating abstractor is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the abstractor's participation agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating abstractor under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating abstractors, agents, or representatives of the division to transact the business of abstracting, which includes but is not limited to any manner of title search or review of titles to real estate, and is further subject to the right of the division to appoint other participating abstractors.

b. Title plant. Participating abstractors shall own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program.

c. Exempt attorneys. Participating attorneys who have been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under their supervision and control, shall be exempt from the requirement to own or lease a title plant. This exemption is a personal exemption of the individual participating attorney, is not transferable, and terminates at such time as the individual ceases providing abstracting services or upon the death or incapacity of the individual.

d. Errors and omissions insurance. A participating abstractor shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

The division will inform the Iowa Land Title Association, the Iowa State Bar Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

e. Participation fees. A participating abstractor shall pay participation fees in such amounts and at such times as the division board may set from time to time by resolution. Participation fees set by the division board are subject to the approval of the authority board.

The division will inform the Iowa Land Title Association, the Iowa State Bar Association, and any person requesting such information of any proposed change in the amount of abstractor participation fees at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.6(4) Abstract of title. For the purposes of the title guaranty program, an abstract of title shall be a written or electronic summary of all matters of record including, but not limited to, grants, conveyances, easements, encumbrances, wills, and judicial proceedings affecting title to a specific parcel of real estate, together with a statement including, but not limited to, all liens, judgments, taxes or special assessments affecting the property and a certification by a participating abstractor that the summary is complete and accurate.

An abstract of title shall be brought up to date and certified by a participating abstractor prior to the issuance of a title guaranty certificate; provided that, in the event a titleholder undertakes to refinance a mortgage or grant a junior mortgage on residential property; and a title guaranty certificate was issued for a transaction while said titleholder owned the property; and no changes in the ownership or in the legal description of the property have occurred since the above described title guaranty certificate effective date, for the purposes of the title guaranty program, a title guaranty certificate may be issued for the refinanced or junior mortgage based on the coverage and exceptions from the above described prior title guaranty certificate and a search of the public records from the effective date of the above described prior title guaranty certificate including a ten-year judgment lien search against the titleholder. For the purposes of the title guaranty program, the search and title guaranty certificate issued for refinanced and junior mortgages pursuant to this rule shall be deemed to relate back to the abstract of title and title guaranty certificate issued for the transaction while the said titleholder owned the property.

All abstracts of title and searches shall be prepared and conducted in compliance with division procedures in effect at the time of the updating of the abstract or search. A participating abstractor shall retain a written or electronic copy of each abstract of title or search prepared for a title guaranty certificate and shall provide such copy to the division upon request.

9.6(5) *Attorney title opinion.* All attorney title opinions shall be prepared and issued in compliance with division procedures in effect at the time of issue. A participating attorney shall retain a written or electronic copy of each attorney title opinion and shall provide such copy to the division upon request. Participating attorneys who are issuing agents for the division may issue a commitment as the preliminary attorney title opinion and the title guaranty certificate as the final attorney title opinion in compliance with division procedures in effect at the time of issue.

9.6(6) *Participant's interest in property.* No participant shall prepare an abstract of title or issue attorney title opinions, commitments, or certificates upon property in which the participant has an interest without prior authorization of the division.

265—9.7(16) Application for waiver of participation requirements. The division board shall consider applications for waiver of the requirements of Iowa Code section 16.91(5).

9.7(1) Applications for waiver of participation requirements shall be in writing and directed to the division board. The application shall:

- a. State which participation requirements are requested to be waived; and
- b. Include adequate supporting information and argument so that the division board may make an informed decision on the request.

9.7(2) The applicant may request to appear before the division board but shall not be required to make a personal appearance.

a. If the applicant appears before the division board regarding the application, the applicant may present additional evidence, including the testimony of witnesses, in support of the application for waiver.

b. If the applicant does not make a personal appearance before the division board regarding the application, the division board may proceed to make a decision based on the application and the supporting information submitted with the application for waiver.

9.7(3) The division will inform participating abstractors and participating attorneys in the county for which the waiver is requested, the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information that an application for waiver has been made to the division. Interested parties may submit evidence or statements in support of or in opposition to the application in writing or by personal appearance before the division board. Notification to interested parties is not a requirement for the division board to consider the waiver, and failure to inform interested parties of an application for waiver shall not void or otherwise nullify any action or decision of the division board.

9.7(4) The division board may grant the waiver if the board finds:

a. That the requirements of Iowa Code section 16.91(5) impose a hardship to the attorney or abstractor; and

b. That the waiver is:

- (1) Clearly in the public interest; or
- (2) Absolutely necessary to ensure availability of title guaranties throughout the state.

9.7(5) The decision of the division board shall be final agency action.

265—9.8(16) Application for title guaranty certificates. The division may authorize entities engaged in the real estate industry to apply directly to the division for a title guaranty commitment or certificate to be issued by the division. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry which the division may authorize include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(27), and closing and escrow companies.

265—9.9(16) Contracts, forms, manuals, instructions, and guides. The division shall adopt and issue such contracts, forms, manuals, instructions, and guides as the division deems necessary to set out participation standards and requirements, and such other matters that the division deems necessary for implementation and effective administration of the title guaranty program. The provisions of the manuals, instructions, and guides shall be applicable to participants in the title guaranty program.

9.9(1) Adoption. The contracts, forms, manuals, instructions, and guides will be adopted or revised or amended on approval of a majority vote of the division board, without publication of notice and without providing an opportunity for public comment. In accordance with Iowa Code section 17A.4(2), the contracts, forms, manuals, instructions, and guides are a classification of rule making for which notice and public participation are impracticable and unnecessary because:

a. Iowa Code section 16.2 vests the powers of the division relating to the issuance of title guaranties in the division board, and Iowa Code section 16.91 authorizes the division board to operate the title guaranty program and adopt contracts and forms and set fees;

b. Such contracts, forms, manuals, instructions, and guides may need to be amended quickly to address title underwriting standards and procedures, to protect the division and its programs, and to ensure the efficient operation of the division; and

c. Participants are agents or quasi agents of the division and the contracts, forms, manuals, instructions, and guides are intra-agency directives.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the contracts, forms, manuals, instructions, and guides at least 30 days prior to the date of the division board meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.9(2) Availability. The contracts, forms, manuals, instructions, and guides are furnished to participants in the title guaranty program at no charge. They may be reviewed and copied in their entirety from the division's Web site. Copies shall be deposited with the administrative rules coordinator and at the state law library. Copies of paper editions for nonparticipants are available from the division upon request for a fee. The division will charge a fee to recover the costs of the binder, contents, and mailing for the paper editions. Current price information is available upon request from the division.

265—9.10(16) Rates. The division board shall fix the rate or fee, if any, for the owner's guaranty, the lender's guaranty, the various endorsements, the closing protection letter and any other product or service that will be offered by the division. The division shall set the rates by resolution and may change the rates from time to time in the same manner.

265—9.11(16) Fees and premiums. No participant in the title guaranty program shall charge or receive any portion of the fee for the guaranty or the fee for any other product or service that is paid to the division.

9.11(1) A participant shall calculate the title certificate fees according to the applicable rate schedule in effect on the effective date of the commitment or of the certificate, whichever is earlier. A participant shall collect the fee in effect for any other product or service offered by the division at the time the product or service is sold.

9.11(2) A participant may charge and collect fees that are customarily charged for services or other products provided as part of a real property transaction.

9.11(3) All fees collected by a participant payable to the division shall be held for the use and benefit of the division until paid to the division. The participant shall remit the fees payable to the division at the time and in the manner directed by the division from time to time, but in no event later than the date of the issuance of the guaranty.

265—9.12(16) Audit procedures.

9.12(1) *Serialized forms audit.* The division will periodically supply to a participating attorney who issues title guaranty certificates a list of all serialized forms that, according to the division's records, are in the custody and control of the participating attorney. The participating attorney shall, within 15 days of receipt of the list of serialized forms, return the list to the division either with a certification that it is correct, or with an explanation of any discrepancies between the records of the division and the participating attorney.

9.12(2) *Office audits.* The division may, with or without notice to a participating abstractor or participating attorney, audit the participant at the participant's office. This audit may include, but need not be limited to, a review of the participant's commitment and policy issuance procedures, an audit of serialized forms, an audit and test of title plants and tract indices, and verification of the participant's compliance with participation agreements, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements of the division.

265—9.13(16) Claims.

9.13(1) *Claim procedures.* In the event of loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment or certificate or by reason of any other matter for which the division is actually, possibly, or allegedly liable (referred to herein as a "claim"), the rights and responsibilities of the division and the participating abstractor and participating attorney are as follows:

a. Upon receipt of notice by a participant of a claim, the participant must notify the division in writing, setting forth and including at a minimum:

- (1) The name, address, and telephone number of the claimant and the claimant's attorney, if any;
- (2) The number assigned to the commitment and certificate and a copy of the commitment and certificate if not previously forwarded to the division; and
- (3) A description of the claim and copies of any documents, correspondence, surveys, title searches, or other writings, and other information supplied to or available to the participant relevant to the claim.

Under this rule, the participant shall notify the division within three business days of receipt of information about a claim by the participant and shall mail notification to the division by first-class mail at the division's address in subrule 9.4(1). In addition to the notice required by the preceding sentence, if the nature of the claim is such that the insured claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the participant shall notify the division by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a participant receives a request from the division for information with respect to a claim, the participant shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the participant and relevant to the claim, even if not specifically requested by the division. The participant's response to the division under this paragraph must be made within three days of the participant's receipt of the request and must be sent by first-class mail to the division employee, agent, or other authorized person who requested the information. In addition to the participant's response as required by the preceding sentence, if the nature of the claim is such that the insured claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by a response quicker than that required by the preceding sentence, or if the division requests a quicker response, the participant shall respond by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods, to the division employee, agent, or other authorized person requesting the information.

c. A participant shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the participant's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the participant or participants involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable. Investigation and resolution may include, but are not limited to, determinations of liability, retention of counsel for the division or for the insured claimant, settlement with the insured claimant or other party, and recovery of amounts paid.

9.13(2) *Claim loss recovery from participants.*

a. Amounts paid by the division in the investigation and resolution of a claim, hereinafter referred to as a "claim loss," including, but not limited to, payments to the insured, payments to adverse claimants, attorneys' fees, and all other expenses and costs related to or arising from the claim in accordance with the provisions of this rule, are recoverable from a participant by the division.

b. In the absence of knowledge by the participant about the title defect or other matter causing the claim loss, the division shall not seek recovery from the participant when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, the division's manuals, guides, procedures, and any other written or oral instructions or requirements given by the division that the participant relies upon in issuing an abstract of title, opinion, commitment, certificate, or endorsement;

(4) Errors in surveys provided by registered Iowa land surveyors that the participant relies upon in giving survey coverage or issuing an endorsement or endorsements; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract of title, opinion, commitment, certificate, or endorsement.

c. The participant shall reimburse the division for a claim loss when the division determines, in accordance with 9.13(2) "d," that the participant is liable and when the claim loss arises from one or more of the following:

(1) Errors by the participant in the title search and report of information in the public record;

(2) Reliance by the participant upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the participant in examining the title information provided in an abstract of title, survey, affidavit, or other source of title information;

(4) Errors made by the participant in the preparation or review of an abstract of title, opinion, commitment or certificate;

(5) Knowing issuance of an abstract of title, opinion, commitment or certificate by the participant upon a defective title; or

(6) Failure of the participant to follow these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division with respect to any other matters not included within 9.13(2) "c."

d. Unless another rule, the Code of Iowa, a procedure, or a guideline provides for a different standard of liability or other rule for determining whether the participant shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“*c*”(1), the division may demand reimbursement from the participant if the participant was grossly negligent in conducting the title search. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the participant upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the participant.

(2) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“*c*”(2), the division may demand reimbursement from the participant if the participant relied upon sources of title searches or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“*c*”(3), the division may demand reimbursement from the participant if the participant negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a title commitment or certificate. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the participant has failed to meet the standard of skill and competence of an abstractor who prepares an abstract of title or a lawyer who examines titles in the community where the claim arose. The division may also consider whether the participant followed these rules, the division’s manuals, guides, procedures, or any other written or oral instructions or requirements given by the division in examining the title. In addition, the division may seek input from other participants in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract of title or of a lawyer who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“*c*”(4), the division may demand reimbursement from the participant if the participant negligently prepared and reviewed an abstract of title, opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“*c*”(5), the division may demand reimbursement from the participant if the issuance of the abstract of title, opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract of title, opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)“*c*”(6), the division may demand reimbursement from the participant if the participant failed to follow these rules, the division’s manuals, guides, procedures, or any other written or oral instructions or requirements given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a participant, the division shall state the basis of the reimbursement as indicated in 9.13(2)“*c*” and 9.13(2)“*d*”(1) to (6).

e. The division board may, from time to time by resolution, establish levels of authority, including dollar amounts, for the board, the director and division staff for the settlement of claims made under the title guaranty certificates.

265—9.14(16) Rules of construction. In the construction of these rules, the following rules shall be observed, unless either the rules of the Iowa Code chapter 4, Construction of Statutes, or the following rules are inconsistent with the manifest intent or the context of the rule:

The word “shall” means mandatory and not permissive and the word “may” means permissive and not mandatory.

The word “closing” includes, but is not limited to, the recording of a deed executed and delivered in lieu of a mortgage foreclosure or pursuant to a mortgage foreclosure proceeding and also includes the entry into a binding agreement and transfer of possession by a seller to a buyer on a contract sale of land.

Nothing contained in these rules shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other party.

Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other penalties or sanctions under these rules, or otherwise, against the participating abstractor, participating attorney or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

The failure of the division to enforce a right or remedy under these rules, a statute, or the common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

265—9.15(16) Implementation. The provisions for abstracting requirements in the event of refinancing a mortgage or granting a second mortgage set out in subrule 9.6(4), first unnumbered paragraph, shall be implemented upon the issuance of a manual, instruction or guide by the division board.

265—9.16(16) Forms, endorsements, and manuals. Rescinded IAB 8/4/04, effective 9/8/04.

265—9.17(16) Application for waiver of participation requirements. Rescinded IAB 8/4/04, effective 9/8/04.

265—9.18(16) Rates. Rescinded IAB 8/4/04, effective 9/8/04.

265—9.19(16) Charges. Rescinded IAB 8/4/04, effective 9/8/04.

265—9.20(78GA,ch54) Mortgage release certificate.

9.20(1) Definitions. As used in this rule, unless the context otherwise requires:

“*Authority*” means the Iowa finance authority described in Iowa Code chapter 16.

“*Certificate*” means the certificate of release or partial release of mortgage issued by the division.

“*Claim for damages*” means a claim for actual money damages against the division caused by the negligent, wrongful or erroneous filing of a certificate while the staff of the division are acting within the scope of their office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage.

“*Division*” means the title guaranty division in the Iowa finance authority.

“*Effective release or satisfaction*” means a release or satisfaction of mortgage pursuant to Iowa Code chapter 655.

“*Mortgage*” means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of \$500,000 or less. Any future advance supported by the mortgage that exceeds the original principal amount of \$500,000 shall not be eligible for release under this rule.

“Mortgagee” means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

“Mortgage servicer” means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor’s successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

“Mortgagor” means the grantor of a mortgage.

“Payoff statement” means a written statement furnished by the mortgage servicer which sets forth all of the following:

1. The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

2. Interest on a per-day basis for an amount set forth pursuant to “1” above.

3. The address where payment is to be sent or other specific instructions for making a payment.

4. If, after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage and the legal description of the property that will be released from the mortgage.

“Person” shall have the same meaning as in Iowa Code chapter 4.

“Prior mortgage” means a mortgage for which an effective release or satisfaction has not been filed of record which was either paid in full by someone other than the real estate lender or closer or was paid by the real estate lender or closer under a previous transaction.

“Real estate lender or closer” means a person licensed to regularly lend moneys in Iowa to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

9.20(2) Request for certificate.

a. A real estate lender or closer may request a certificate from the division by submitting:

- (1) A fully and accurately completed request form.

- (2) All necessary documents and information to support the certifications made on the request form.

- (3) Payment of the filing fee by check or money order made payable to the filing officer of the county in which the certificate is to be recorded in the amount of the filing fee imposed by the filing officer of the county in which the certificate is to be recorded. If duplicate certificates are to be recorded in more than one county, additional checks or money orders payable to the filing officer of such counties shall be submitted.

b. A certificate which is not a full release but is executed and recorded to release part of the security described in a mortgage shall be issued only when the real estate lender or closer has paid the mortgage servicer for the partial release. A certificate shall not be issued for a partial release if the real estate lender or closer is requesting a release pursuant to 1999 Iowa Acts, chapter 54, section 1(7).

c. In the event a person requesting a certificate fails to complete any of the steps or include any of the required information described in this rule, the division may reject the request for a certificate and require the person to refile or amend the request so that it conforms to the provisions of the law or this rule.

9.20(3) Forms.

a. Requests for mortgage release certificates shall be made on forms developed and provided by the division. The forms may be obtained from the division or from the authority’s Internet Web site located at <http://www.ifahome.com>. The real estate lender or closer must use the forms developed and provided by the division; however, it is permissible to use reproductions of the forms, including reproductions placed in a word processing program. A reproduced form must substantially conform to the forms provided by the division. A nonconforming form may be rejected by the division.

b. The forms to request a certificate of release shall identify the mortgage to be released and shall contain sufficient information to identify that the requester is a real estate lender or closer; establish that the time requirements have elapsed; establish the party or parties to receive notice of the request; indicate that the debt secured by the mortgage to be released has been paid and the mortgage was less than \$500,000; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

c. The forms giving notice of the request shall be directed to the last-known mortgage servicer and shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

d. The certificate of release form shall contain sufficient information to identify the mortgage released; recite the authority for the certificate; recite that the substantive and procedural requirements as to the amount of debt, payment, notice, or other requirements of the division have been met; and, in the case of partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

e. The notice by publication form shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

f. All forms may require real estate lenders or closers to provide other information as may be required by law or this rule.

9.20(4) *Certification to the division—mortgages paid by real estate lender or closer.* To obtain a certificate for a mortgage which the mortgage lender or closer has paid and an effective release or partial release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

a. That more than 30 days have elapsed since the date the payment was sent.

b. That, as of the date of the request for a certificate, no effective mortgage release or partial release appears of record.

c. That the payoff statement satisfies one of the following:

(1) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee; or

(2) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

d. That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence satisfactory to the division of payment to the mortgagee or mortgage servicer.

e. That the original principal amount of the mortgage was \$500,000 or less.

f. That the information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last-known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

g. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

h. If the last-known address of the mortgage servicer is unknown and the real estate lender or closer requesting the certificate is unable to locate an address for the last mortgage servicer of record, the real estate lender or closer may attach an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer, after exercising due diligence, is unable to locate an address for the last mortgage servicer of record.

9.20(5) Certification to the division—prior mortgages. To obtain a release of a mortgage that has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

- a. That the mortgage was paid in full in accordance with one of the following:
 - (1) By someone other than the real estate lender or closer requesting the certificate.
 - (2) By the real estate lender or closer under a previous transaction.
- b. That, as of the date of the request for a certificate, no effective mortgage release appears of record.
- c. That the original principal amount of the mortgage was \$500,000 or less.
- d. That the information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last-known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

e. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

f. If the last-known address of the mortgage servicer is unknown and the real estate lender or closer requesting the certificate is unable to locate an address for the last mortgage servicer of record, the real estate lender or closer may attach an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer, after exercising due diligence, is unable to locate an address for the last mortgage servicer of record.

9.20(6) Division determination to give notice—reliance on information submitted.

a. Upon receipt of a request for issuance of a certificate, the division shall determine that an effective release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement based upon the information submitted by the person seeking the certificate.

b. The division may use discretion in determining whether an effective release has been executed and recorded and shall rely on the information contained in the request in determining whether further inquiry may be required before giving notice of intent to issue a certificate.

c. The division shall not be required to make a physical search of the real property records in the county or counties where the certificate is to be recorded nor will the division be required to obtain any formal report such as a lien search, abstract opinion, or attorney's opinion. The division may, but is not required to, verify the status of an effective release by contacting the officer responsible for maintaining the real property records of the county in which the certificate is to be recorded; however, if such verification is determined to be necessary, the division may rely on information from the filing officer obtained by telephone, facsimile, electronic mail, or other such means.

d. The division shall not be required to verify or research the accuracy or status of a title to any legal descriptions which are requested to be partially released. The division shall rely on the descriptions certified to the division in the request for a certificate of partial release.

9.20(7) *Contested case proceeding.* In the event a person who is seeking a certificate is aggrieved by the decision of the division not to issue a certificate and wishes to challenge that decision, the person must request a contested case proceeding pursuant to the rules described in 265—Chapter 7. The request for a contested case proceeding must be filed with the division within ten days from the date of the division's decision not to issue a certificate. An aggrieved person must exhaust all administrative remedies before that person may file a proceeding in any court.

9.20(8) *Notice of intent to issue certificate and recording.*

a. Upon determination that an effective release or partial release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement, the division shall send written notice of intent to execute a certificate by certified mail to the last-known address of the last mortgage servicer of record. If the real estate lender or closer requesting the certificate has attached an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer is unable to locate an address for the last mortgage servicer of record, the division shall proceed pursuant to paragraph 9.20(8)“*e.*”

b. The notice shall be given by certified mail and the 30-day period shall begin on the date the notice is placed in the custody of the United States Postal Service for delivery to the mortgage servicer.

c. The notice shall state that a certificate shall be recorded by the division after 30 days from the date the notice was mailed unless the mortgage servicer notifies the division of any reason the certificate of release should not be executed and recorded.

d. In the event the notice sent by certified mail to the last-known mortgage servicer of record is returned to the division for the reason that the mortgage servicer is no longer at the address or the certificate of receipt is not returned within 30 days of mailing, the division shall attempt to serve the mortgage servicer pursuant to Iowa Rule of Civil Procedure 56.1.

e. In the event the division is unable to serve the mortgage servicer, the division shall prepare a notice for publication and send it to the real estate lender or closer for publication in a newspaper of general circulation in the county in which the mortgage to be released is recorded. Notice by publication shall be once each week for three consecutive weeks and shall provide for a 20-day period following the last publication for the mortgage servicer to respond to the division. A copy of the notice together with a certificate of publication shall be submitted to the division after the last publication date. Upon receipt of the certified notice and expiration of the time to respond, the division shall file the certificate of release provided that the mortgage servicer has not notified the division of any satisfactory reason the certificate of release should not be executed and recorded. The notice shall also be posted to the authority's Web page.

f. If, prior to executing and recording the certificate of release, the division receives written notification setting forth reasons satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release. The division may use its discretion in determining whether a satisfactory reason not to record the certificate has been given depending upon the facts. A satisfactory reason not to record the certificate includes, but is not limited to:

- (1) Evidence of an unpaid balance under the terms of any loan secured by the mortgage.
- (2) Evidence that a release or satisfaction of mortgage pursuant to Iowa Code chapter 655 has been placed of record.
- (3) Failure to submit any information requested by the division or required by the law or this rule.

g. In the event the division determines that a certificate should not be recorded, the division shall return the check or money order, which was made payable to the county filing officer, to the real estate lender or closer that requested the certificate.

h. If the division does not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded, the division shall proceed to execute and record the certificate. The certificate shall be delivered, by regular mail, along with proper recording fees, to the filing officer in the county where the subject property is located.

i. If duplicate certificates were requested, the division will also deliver the duplicate certificates to the filing officer of those counties.

j. If duplicate certificates were not requested, the real estate lender or closer may record a certified copy of the certificate in another county with the same effect as the original.

9.20(9) Certificate—mortgages paid by real estate lender or closer. Certificates issued on mortgages paid by the real estate lender or closer shall contain substantially the following information:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), and that more than 30 days have elapsed since the date the notice was sent.

b. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

c. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and it does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(2) That the mortgage release certificate is a partial release of the mortgage and contains the legal description of the property that will be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

d. That payment was made in accordance with the payoff statement including the date the payment was received by the mortgagee or mortgage servicer as evidenced by a bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer or other documentary evidence of payment to the mortgagee or mortgage servicer.

e. That the original principal amount of the mortgage was \$500,000 or less.

f. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

g. That the person executing the certificate is a duly authorized officer or employee of the division.

9.20(10) Certificate—prior mortgages. Certificates issued on mortgages that have been paid in full by someone other than the real estate lender or closer or were paid by the real estate lender or closer under a previous transaction shall contain substantially the following information:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), and that more than 30 days have elapsed since the date the notice was sent.

b. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

c. A statement indicating the mortgage was paid in full in accordance with one of the following:

(1) By someone other than the real estate lender or closer requesting the certificate.

(2) By the real estate lender or closer under a previous transaction.

d. That the original principal amount of the mortgage was \$500,000 or less.

e. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

f. That the person executing the certificate is a duly authorized officer or employee of the division.

9.20(11) Authority to sign certificate. The board of directors of the division may, by resolution, authorize such personnel within the division as the board should determine to execute and record the certificates pursuant to 1999 Iowa Acts, chapter 54, and this rule.

9.20(12) Records—return to the division. The certificate of release shall contain instructions to the filing officer(s) to return the document to the division, once file-stamped and entered in the real estate records of the county.

9.20(13) Photocopy. The division shall transmit a copy of the recorded certificate to the real estate lender or closer that requested the certificate.

9.20(14) Effect of filing of the certificate of release. For purposes of a release or partial release of a mortgage, a certificate of release executed under this rule that contains the information and statements required under 1999 Iowa Acts, chapter 54, and this rule is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

9.20(15) Effect of wrongful or erroneous recording of a certificate of release. A wrongful or erroneous recording of a certificate of release by the division or the authority shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

9.20(16) Liability of the division. In addition to any other remedy provided by law, if the division or the authority wrongfully or erroneously records a certificate of release pursuant to this rule, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release. A claim for damages is a tort claim as described in Iowa Code chapter 669 since the claim is for money damages caused by the wrongful or erroneous actions of the staff of the division or the authority. The procedures of Iowa Code chapter 669 shall apply to any claim for damages arising out of 1999 Iowa Acts, chapter 54.

Prior to any such satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release, the division will inform the real estate lender or closer that requested the certificate about the proposed terms and allow it a reasonable opportunity to resolve or satisfy the claim on other terms.

9.20(17) Subrogation. Upon payment of a claim relating to the recording of a certificate, the division is subrogated to the rights of the claimant against all persons relating to the claim including, but not limited to, the real estate lender or closer that requested the certificate.

9.20(18) Additional remedies. In addition to any other remedy provided by law, the division may recover from the real estate lender or closer who requested the certificate all expenses incurred, and all damages including punitive or exemplary damages paid to the mortgagee or mortgage service provider, in satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release.

9.20(19) Record keeping. The original certificate of release document shall remain in the records of the division or the authority for the minimum period of one year after execution. After this time, records may be stored by electronic or other means. Requests and other documents generated or received under this system shall be indexed in such a manner as to allow their retrieval at a future date.

This rule is intended to implement 1999 Iowa Acts, chapter 54.

265—9.21(16) Seal. The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words “Title Guaranty Division Iowa Finance Authority” and may be used to authenticate acts and legal instruments of the division.

These rules are intended to implement Iowa Code sections 17A.3, 17A.9, 17A.10, 16.1, 16.2, 16.3, 16.5, 16.40, 16.91, 535.8(10), and 535A.12.

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