

CHAPTER 9
TITLE GUARANTY DIVISION

265—9.1(16) Location. The title guaranty division (“division”) of the Iowa finance authority (“authority”) is located at the offices of the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309, telephone: 515-242-5128.

265—9.2(16) Business hours. The business hours for the division are 8 a.m. to 4:30 p.m. Monday to Friday except for legal holidays.

265—9.3(16) Division board. The division has a five-member board which acts through the board of the authority. The membership includes an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender, and a representative of the housing development industry. Members are appointed by the governor and confirmed by the senate for a six-year term. The members of the board annually elect a chairperson, vice chairperson and secretary and other officers as they determine are necessary.

265—9.4(16) Authority staff. The executive director of the authority shall appoint a director of the division who shall be an attorney and serve as an ex-officio member of the board of the division.

265—9.5(16) Board meetings. Meetings of the board shall be held at the call of the chairperson or when a majority of the members so request. Three members of the board constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division.

265—9.6(16) Duties of the division. The division is directed by state law to establish a title guaranty program to protect against loss or damage caused by defective title to real property.

265—9.7(16) Information and forms. Information and forms may be obtained from the division. All submissions shall be made to the division.

Rules 9.1(16) to 9.7(16) are intended to implement Iowa Code sections 17A.3, 16.1(34), 16.1(35), 16.2(1), 16.3(14), 16.5(15), 16.40, 16.91, and 535A.12.

265—9.8(16) Petition to promulgate, amend or repeal a rule. An interested person or legal entity may petition the division requesting promulgation, amendment or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a statement of:

1. The rules sought to be promulgated, amended, or repealed. A rule proposed to be amended shall be stated in full with proposed deletion enclosed in brackets, and proposed additions underlined.
2. Factual rationale for the proposed action.
3. Any propositions of law to be asserted.
4. Factual account of impact on petitioner of proposed action.
5. Name and address of petitioner and any other person or entity known to be interested in the rule sought to be adopted, amended, or repealed.

The petition should be typed or printed, and captioned BEFORE THE IOWA FINANCE AUTHORITY, TITLE GUARANTY DIVISION and shall be deemed filed when received by the director of the title guaranty division. Upon receipt of the petition, director shall:

1. Within 10 days, mail a copy of the petition to any parties named therein. The petition shall be deemed served on the date of mailing to the last known address of the party being served.
2. Submit petition to the division board at the next scheduled meeting, with recommended action.

3. Within 60 days after the date of receipt of petition, either deny the petition or initiate rule-making proceedings in accord with Iowa Code chapter 17A.

In the event of denial of a petition, the division shall issue an order setting forth the reasons for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

265—9.9(16) Request for oral presentation concerning intended rule making. Twenty-five interested persons, a governmental subdivision, the administrative rules review committee, an agency, or an association having not less than 25 members may make written request for oral presentation concerning an intended rule making. The request shall state:

1. Name, address and telephone number of each person or agency party to the request;
2. The number and title of the proposed rule as given in the notice of intended rule making;
3. The general content of the oral presentation.

Receipt and acceptance of such request shall be promptly acknowledged by the division. Not less than 20 days after publication of notice of intended rule making, the division shall allow oral presentations as requested at a time when, and the place where stated in the publication of notice of intended rule making.

If requested to do so by an interested person, either prior to adoption or within 30 days thereafter, the division shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule.

265—9.10(16) Declaratory rulings. The division shall provide declaratory rulings as to the applicability of any statutory provision, rule or other written statement of law or policy, decision or order when petitioned to do so by the public where, in the judgment of the division, it is necessary or helpful for them to conduct their affairs in accordance with the law.

Requests for declaratory rulings shall be made to the director in writing.

Within 30 days after submission of a request for declaratory ruling, the division shall issue a written ruling on the rule, statute or policy in question.

The division may decline to rule when, in the judgment of the division, the ruling would be beyond the division's scope of authority, when no clear answer is determinable, or when the issue presented is pending resolution by a court of Iowa or by the attorney general.

265—9.11(16) Procedure for informal settlements in contested cases. Unless precluded by statute, informal settlement of disputes over rules of the division that may otherwise result in contested case proceedings as prescribed in Iowa Code section 17A.12 shall be encouraged.

All such informal settlements shall be made by the director subject to ratification by the division, and by the parties contesting the rule in question. The settlement shall be expressed in a written stipulation representing an informal mutual consent.

265—9.12(16) General. The title guaranty division of the Iowa finance authority has established a program for offering mortgage lenders and the general public low cost protection against loss or damage caused by defective titles to Iowa real property. The title guaranties offered by the division will facilitate mortgage lender participation in the secondary market and add to the integrity of the land-title transfer system in the state. Title guaranty owners and lenders certificates will be available through participating attorneys throughout the state who shall act as limited agents for the division for the sole purpose of issuing title guaranty certificates subject to the rules of the division and applicable law. Any participating attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the division. The division shall require participating abstracters to update the abstract to any real property for which a guaranty is desired, in accord with division standards. Upon request by a mortgagor or participating lender, the participating attorney will issue a title guaranty

commitment and the final guaranty certificate after reviewing an abstract prepared by a participating abstracter.

265—9.13(16) Participation requirements for attorneys. Any attorney licensed to practice law in the state of Iowa shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement will require that the participating attorney:

1. Maintain attorney's liability insurance with limits of not less than \$100,000 per claim and not less than \$300,000 total annual limit, and disclose to the division the name, address, and telephone number of the liability carrier and the amount of the insurance maintained.
2. Examine real estate titles for the purpose of accurately reporting the state of the title involved in accordance with the Iowa Land Title Examination Standards of the Iowa State Bar Association, where applicable, or other applicable law.
3. Pay an initial participation fee of \$25.
4. Abide by the rules of the division and applicable law.

265—9.14(16) Participation requirements for abstracters. Any abstracter or abstracting concern shall be eligible to participate in the title guaranty program upon execution, and acceptance of a participation agreement in a form prescribed by the division. The participation agreement shall require the participating abstracter or abstracting concern to:

1. Prepare abstracts in accord with the most current Iowa Land Title Association Uniform Abstracting Standards, where applicable.
2. Own or lease, and maintain and use in the preparation of abstracts as 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 abstracter's participation in the title guaranty program. Provided however, participating attorneys providing abstract services continuously from November 12, 1986, to the date of application either personally or through persons under their supervision and control shall be exempt from the requirements of this paragraph.
3. Maintain abstracter's liability insurance in an amount not less than \$50,000 total annual limit, and disclose to the division the name of the liability carrier and the amount of insurance maintained.
4. Pay an initial participation fee of \$25.
5. Retain either a carbon copy or a mechanical reproduction of each certificate continuation and new abstract of title prepared after December 31, 1986, for which a title guaranty is issued.
6. Abide by the rules of the division and applicable law.

265—9.15(16) Participation requirements for lenders. Any mortgage lender as defined in Iowa Code section 16.1(14) that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program.

265—9.16(16) Forms, endorsements, and manuals. The division shall adopt title guaranty certificate forms and endorsement forms that are acceptable to the secondary market in accord with the provisions of Iowa Code chapter 16. In addition, the division shall publish a manual for use by participating attorneys, abstracters, and lenders, which manual may be revised from time to time. Such manual shall include forms of the certificates and endorsements. The manual shall also include the membership participation standards and requirements, and such other matters deemed necessary by the division for implementation and effective administration of the title guaranty program.

265—9.17(16) Application for waiver of participation requirements. It is the intention of the division to make title guaranties available statewide. Therefore, in order to achieve the widest possible geographic coverage, the division will allow any abstractor or attorney the opportunity to apply for a waiver of the participation requirements set out in rules 9.13(16) and 9.14(16). Any application for waiver of participating requirements should be directed to the board of the division and should succinctly state which participation requirements are requested to be waived. The request should contain adequate supporting information and argument so that the board may make an informed decision on the request. It is the intention of the board to waive participation requirements only when it is determined that they result in a hardship to the requesting abstractor or attorney and the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

265—9.18(16) Rates. The division shall fix the rate for the owner's guaranty, the lender's guaranty, and the various endorsements that will be offered by the division. The division shall make a published rate schedule available to mortgage lenders.

265—9.19(16) Charges. No participant in the title guaranty program shall charge or receive any portion of the charge for the guaranty as a result of participation in the title guaranty program.

265—9.20(16) Disclosure information. Rescinded IAB 5/2/90, effective 6/6/90.

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.

Rules 9.8(16) through 9.21(16) 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.

265—9.22(17A,16) Contested case proceedings presiding officer. In all matters relating to title guaranties, contested cases shall be presented to the board of the title guaranty division.

265—9.23(17A,16) Right to contested case proceedings. In any case in which the legal rights, duties, or privileges of a party are required by Constitution or statute to be determined after an opportunity for an evidentiary hearing, any party aggrieved by action of the board or staff of the division may request review of the action by the board of the division at its next regularly scheduled board meeting. An aggrieved party may request either an informal resolution of the complaint or may request contested case proceedings. The board or staff of the division may also initiate contested case proceedings without a request by an aggrieved party. An evidentiary hearing need not be provided if there are no factual issues. In those cases, policy issues shall be presented to the board at its next meeting.

265—9.24(17A,16) Time limit for request. A request for contested case proceedings must be made by an aggrieved party within 60 days after official notification of an action.

265—9.25(17A,16) Notice of contested case. After receiving a timely request for contested case proceedings, or when contested case proceedings are initiated by the board or staff without a request, notice complying with Iowa Code section 17A.12, subsection 2, shall be mailed to the parties, certified mail, return receipt requested. Alternatively, notice may be given in any manner permitted by the Iowa Rules of Civil Procedure, for the commencement of a civil action, or may be given in accordance with any applicable "long arm statutes."

265—9.26(17A,16) Form of request. A request for contested case proceedings shall be in writing and be signed by the aggrieved party or by an attorney at law representing the aggrieved party.

265—9.27(17A,16) Subpoena power. The division shall have all subpoena power conferred on it by statute. Division subpoenas shall be issued to a party on request, shall be signed by the director of the division, and shall be under the seal of the division.

265—9.28(17A,16) Conduct of contested case. Contested case proceedings shall comply with Iowa Code sections 17A.12 to 17A.17. The position of the division shall first be presented, then the position of the aggrieved party shall be offered. Rebuttal by either side may be made where appropriate, and the chair or other presiding officer of the division board may limit or direct the hearing to avoid repetitive or unnecessary portions of a presentation.

265—9.29(17A,16) Decisions. Decisions of the board shall be in writing, and shall be mailed to the parties involved in the proceeding.

265—9.30(17A,16) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the division's board by ordinary mail, c/o the division's office at Suite 222, 200 East Grand Avenue, Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven calendar days from the chair's decision. The chair shall notify the parties of a decision to adopt additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

Rules 9.22(17A,16) to 9.30(17A,16) are intended to implement Iowa Code sections 17A.10 to 17A.18.

[Filed 2/28/86, Notice 1/15/86—published 3/26/86, effective 4/30/86]

[Filed 12/12/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]

[Filed 7/10/87, Notice 6/3/87—published 7/29/87, effective 9/2/87]

[Filed 4/13/90, Notice 12/13/89—published 5/2/90, effective 6/6/90]

[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]