Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 265—Chapter 9
"Title Guaranty Division"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 16.5 and 16.91

State or federal law(s) implemented by the rulemaking: Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 through 16.93, 17A.10 and 535.8

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024	1963 Bell Avenue
9:15 to 9:30 a.m.	Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Iowa Finance Authority (Authority) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind 265—Chapter 9 and adopt a new chapter in lieu thereof. The chapter describes the structure, policies, and procedures of the Iowa title guaranty division (division) of the Authority.

The new chapter eliminates language that is duplicative of statutory language, eliminates unnecessary and inconsistent language, removes unnecessarily restrictive terms and updates outdated language. Additionally, the following changes from the existing chapter are proposed:

- The definition of "commitment" in rule 265—9.1(16) will be clarified.
- Rule 265—9.4(16) will be updated to provide correct contact information for the division.
- The process to obtain a title plant waiver, currently addressed in rule 265—9.7(16), will be streamlined by removing the requirement that the division board approve such waivers.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Participants in the program pay an annual renewal fee pursuant to Iowa Code section 16.91(4). The division collects a fee to provide a mortgage release certificate. The division charges premiums for the certificates and endorsements it issues.

- Classes of persons that will benefit from the proposed rulemaking:

Users of the division's services may benefit from the improved clarity of the chapter. Applicants and participants may also benefit from improved clarity and streamlining of the process to obtain a title plant waiver.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Participants in the title guaranty program pay an annual renewal fee pursuant to Iowa Code section 16.91(4). The division collects a fee to provide a mortgage release certificate. The division charges premiums for the certificates and endorsements it issues.

- Qualitative description of impact:

The proposed rulemaking will provide clarity about the division's structure, policies, and procedures.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Division staff time is required to evaluate and approve applications from participants and to administer the program. Such costs are covered by fees and premiums collected by the division.

- Anticipated effect on state revenues:

The proposed rulemaking has no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed rulemaking does not impose any additional costs compared to the existing Chapter 9.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods for administering the title guaranty program.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Authority did not consider any alternative methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Authority did not consider any alternative methods because the Authority did not identify a less costly or less intrusive method.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The application and monitoring requirements related to the program are no more than necessary to administer the statutory requirements and purposes of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 265—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
TITLE GUARANTY DIVISION

265—9.1(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:

"Abstract" means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, "abstract" may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

"Abstractor" means a person who is engaged in the practice of searching public records for the purpose of creating abstracts.

"Authority" means the Iowa finance authority established by Iowa Code chapter 16.

"Certificate" means the form used to guarantee title, including any part or schedule thereof and any endorsements thereto.

"Claim" means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

"Claim loss" means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys' fees, and all other expenses and costs related to or arising from the claim.

"Closing protection letter" means the division's written agreement to indemnify a lender or borrower or both for loss caused by a participating closer's theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

"Commitment" means the division's written offer to issue a certificate and any endorsements thereto.

"Division" means Iowa title guaranty, a division of the authority.

"Division board" means the board of the division created pursuant to Iowa Code section 16.2A(1).

"Field issuer" means a participant authorized by the division to issue commitments and certificates.

"Mortgage release certificate" means a certificate of release or a certificate of partial release issued by the division, pursuant to Iowa Code section 16.92.

"Participant" means a participating attorney, a participating abstractor, or a participating closer.

"Participating abstractor" means an abstractor who is authorized by the division to prepare abstracts for division purposes.

"Participating attorney" means an attorney licensed to practice law in the state of Iowa who is authorized by the division to prepare title opinions for division purposes.

"Participating closer" means any of the following authorized by the division to issue a closing protection letter: an Iowa licensed attorney disbursing funds through an interest on lawyer trust account, a closing agent licensed by the Iowa division of banking, or a real estate broker licensed by the Iowa real estate commission disbursing funds through a real estate trust account.

"Party" means a participant, or any other person, that has a contractual relationship with the division to provide services for which a claim may be brought against the division.

"Person" means an individual or legal entity, including corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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 of Iowa and to perform other duties as assigned by Iowa law.

265—9.3(16) Organization.

9.3(1) *Location.* The office of the division is located at the address set forth in rule 265—1.3(16). Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's website address is www.iowatitleguaranty.com, and the division's telephone number is 515.452.0484. The division's email address is titleguaranty@iowafinance.com. Inquiries, submissions, applications and other requests for information may be directed to the division by the methods set forth herein.

9.3(2) *Meetings.* Meetings of the division board will generally be held quarterly on the date and time determined by the division board, or in accordance with Iowa Code section 16.2A(6). The division will give advance public notice of each division board meeting pursuant to Iowa Code chapter 21. Division board meetings may be conducted by conference call. Any person may attend and observe division board meetings except for any portion of a division board meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available at the office of the division and on the division's website. A board member who has a conflict of interest may not vote on substantive actions of the division board.

265—9.4(16) Operation. The division offers guaranties of real property titles in the state through the issuance of commitments and certificates.

9.4(1) *Commitments, certificates, forms and manuals.* The terms, conditions, and form of commitments and certificates shall be approved by the division board. The division may adopt and use manuals and other forms as the division deems necessary for implementation and administration of the title guaranty program.

a. The division will provide forms to a participant for use in issuing commitments and certificates on behalf of the division. A participant may not alter any form supplied by the division or use a form supplied by another person to bind the division. In addition, the participant shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by the division.

b. In addition to the division's other rights and remedies, the division may refuse to allow the participant access to any forms until the participant complies with the requirements of this chapter to the satisfaction of the division.

c. A participant shall be liable to the division for loss or damage sustained by the division by reason of the failure of the participant to comply with the requirements of this rule.

9.4(2) *Application for commitments and certificates.* The division will make an application for commitments and certificates available on the division's website.

9.4(3) *Rates.* Rates for commitments, certificates and closing protection letters shall be set pursuant to Iowa Code section 16.91(1). In transactions involving extraordinary risk or unusual or unique endorsements, the division may assess additional charges.

265—9.5(16) Participants.

9.5(1) *General provisions.* An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

9.5(2) *Participant application.* Applications for participation and renewal are available on the division's website. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

9.5(3) *Eligibility considerations.* To determine whether to approve or deny a participant application, factors the division may consider include but are not limited to the following:

a. The needs of the public and the needs of existing or potential customers of the applicant.

b. A history of the operation and management of the applicant's business.

c. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.

d. A credit report or criminal background check of the applicant or the applicant's employees.

e. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.

f. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.

g. Compliance with the title and settlement best practices adopted by the division.

h. Other factors as determined by the division.

9.5(4) *Participation agreement.* The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

9.5(5) *Annual fee.* A participant may be required to pay an annual fee of $75, set pursuant to Iowa Code section 16.91(4).

9.5(6) *Agent relationship.* A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, Iowa Code, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

9.5(7) *Conflict of interest.* A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

9.5(8) *Clearance of title objections.* All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

9.5(9) *Commitment and certificate coverage limitations.* A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable maximum amount of coverage, as determined by the division. If authorization under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment, closing protection letter, or certificate.

9.5(10) *Document retention.* A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the issued date of the certificate or the issued date of the commitment if a certificate is not issued.

9.5(11) *Training.* The division may require a participant and the participant's staff to participate in training sessions or continuing education seminars as deemed necessary by the division to ensure compliance with division requirements and procedures.

9.5(12) *Compliance.* Participants shall comply with Iowa Code, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit

the participant, with or without notice, for verification of compliance. An audit may include but not be limited to a review of the participant's abstracts, title opinions, commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details.

9.5(13) *Revocation.* The division may revoke a participant's authorization to provide services on behalf of the division for reasons, including but not limited to the following:

a. Failure to comply with the terms and conditions of the participation agreement.

b. Failure to submit an annual renewal application.

c. Knowingly withholding or misrepresenting material facts relied upon by the division.

d. Fraud, theft, dishonesty, or misappropriation of funds or documents.

e. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.

f. A finding by the division director of material noncompliance with Iowa Code, these rules, manuals, and any other written instructions given by the division.

g. Other factors as determined by the division.

265—9.6(16) Services offered.

9.6(1) *Abstracting.* Abstracts utilized for division purposes must be prepared by a participating abstractor.

a. Title plant. A participating abstractor shall own and maintain, or lease and use, a title plant, including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under Iowa Code section 16.91(5)*"a"*(2) and paragraph 9.6(1)*"c"* or authorized under Iowa Code section 16.91(5)*"b"* and paragraph 9.6(1)*"d."* 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. A government-maintained and -controlled database is not considered a title plant for division purposes.

b. Intent to build title plant. The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for division purposes, upon review of the following:

(1) The abstractor's business plan;

(2) Evidence that a title plant will be built for a specific county or counties within three years of authorization;

(3) A time line for completion of the title plant; and

(4) A description of the applicant's abstracting experience.

c. Exemption. The exemption available pursuant to Iowa Code section 16.91(5)*"a"*(2) is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

d. Title plant waivers. The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders a high quality of certificates throughout the state, rapid service, and a competitive price.

(1) General provisions. The division shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall accept applications in the same manner as provided in subrule 9.5(2).

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, email address, and telephone number of the applicant;

2. The applicant's business plan;

3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant's abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under Iowa Code section 16.91(5)*"b"*; and
9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.
2. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division.

(5) Conditions. A waiver is unique to the recipient and is nontransferable. The division may limit a waiver as to county, transaction type, duration, or any other limitation. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver annually and may require a renewal, modification or addition to any required assurances. An applicant may only retain a waiver if the applicant continues to meet the requirements for a participant in rule 265—9.5(16). If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the division.

(6) Withdrawal of a waiver. A waiver issued by the division may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division in granting the waiver; or
2. That the waiver recipient failed to comply with all conditions contained in the written ruling; or
3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or
4. That the division has revoked the waiver recipient's authorization to provide services on behalf of the division pursuant to subrule 9.5(13).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

9.6(2) *Issuing title opinions.*

a. All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

b. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

c. 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.

9.6(3) *Issuing commitments and certificates.* Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

9.6(4) *Issuing closing protection letters.*

a. Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

b. The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.

265—9.7(16) Claims.

9.7(1) *Claim procedures.* In the event of a claim, the rights of the division and a party are as follows:

a. Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address as set forth in rule 265—1.3(16) or provide notification by email.

b. When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, title opinions, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

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

d. The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

9.7(2) *Claim loss recovery.*

a. Any claim losses paid are recoverable from a party by the division.

b. In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party 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, manuals, and any other written instructions given by the division that the party relies upon in issuing an abstract, title opinion, commitment, closing protection letter or certificate;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in issuing a certificate that provides survey coverage; or

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

c. The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.7(2)*"d,"* that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the preparation of an abstract or any other report of information in the public record;

(2) Reliance by the party 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 party in examining the title information provided in an abstract, survey, affidavit, or other source of title information;

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

(5) Issuance of an abstract, title opinion, commitment, closing protection letter or certificate by the party with knowledge that title is defective; or

(6) Failure of the party to follow Iowa Code, these rules, manuals, or any other written instructions given by the division.

d. Unless another rule, Iowa Code, manuals, or any other written instruction given by the division provides for a different standard of liability or other rule for determining whether the party 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 party under subparagraph 9.7(2)*"c"*(1), the division may demand reimbursement from the party if the party was grossly negligent in preparing the abstract. 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 party 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 party.

(2) In the event that a claim loss occurs for which the division may seek recovery from a party under subparagraph 9.7(2)*"c"*(2), the division may demand reimbursement from that party if the party relied upon sources of abstracts 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 party under subparagraph 9.7(2)*"c"*(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate.

1. The division may make full review of local county abstracting standards and title standards as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed Iowa Code, these rules, manuals, or any other written instructions given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(4), the division may demand reimbursement from the party if the party negligently prepared or reviewed an abstract, title opinion, commitment, closing protection letter, or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.7(2)*"c"*(5), the division may demand reimbursement from the party if the issuance of the abstract, title opinion, commitment, closing protection letter, or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract, title opinion, commitment, closing protection letter 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 party under subparagraph 9.7(2)*"c"*(6), the division may demand reimbursement from the party if the party failed to follow Iowa Code, these rules, manuals, or any other written instructions given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

265—9.8(16) Mortgage release certificate. Pursuant to Iowa Code section 16.92, the division is charged with the administration of a program to release, after proper notification, paid-off mortgages from real estate titles in Iowa by executing and filing with the county recorder a mortgage release certificate.

9.8(1) *Application.* The division will provide a mortgage release application on the division's website.

9.8(2) *Application fee.* An applicant may be required to pay a fee of $200 to apply for a mortgage release certificate. The fee shall be set by the division.

9.8(3) *Maximum principal amount of mortgage.* The division board may set a maximum principal amount for mortgages that may be released by a mortgage release certificate.

9.8(4) *Authority to sign certificate.* A mortgage release certificate shall be executed by the division director or designee of the division director.

265—9.9(16) Rules of construction. In this chapter, the following rules of construction shall be observed:

1. The word "shall" means mandatory and not permissive and the word "may" means permissive and not mandatory.
2. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.
3. 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 remedies or sanctions under this chapter, or otherwise against a participant or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.
4. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

These rules are intended to implement Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 to 16.93, 17A.10 and 535.8.