

CHAPTER 18  
MORTGAGE BANKERS, MORTGAGE BROKERS, AND REAL ESTATE CLOSING AGENTS

**187—18.1(17A,535B) Definitions.** For the purposes of this chapter, the definitions in Iowa Code chapter 535B shall apply. In addition, unless the context otherwise requires:

“*Criminal background check*” means a state criminal background check and a national criminal history check through the Federal Bureau of Investigation.

“*License application*” means an electronic application submitted to the administrator for a license to operate as a mortgage banker, mortgage broker, or closing agent in accordance with the provisions of 2009 Iowa Code Supplement section 535B.4 as amended by 2010 Iowa Acts, Senate File 2348, section 4.

“*Licensee*” means a person who has a license to operate as a mortgage banker, mortgage broker, or closing agent in accordance with the provisions of 2009 Iowa Code Supplement section 535B.4 as amended by 2010 Iowa Acts, Senate File 2348, section 4.

“*Makes at least four mortgage loans,*” as used in Iowa Code section 535B.1(4) “*a,*” means the person is listed on loan documents as the lender for at least four mortgage loans.

“*Mortgage application*” means:

1. Any communication, regardless of form, from a licensee to a borrower requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

2. Any communication, regardless of form, from a borrower to a licensee for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

“*Mortgage loan originator*” means a natural person who is licensed under 2009 Iowa Acts, Senate File 355, and 187—Chapter 19.

“*Nationwide mortgage licensing system and registry*” or “*NMLS&R*” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage providers, mortgage lenders, mortgage brokers, and mortgage servicers.

“*Services a loan*” or “*servicing a loan*” means undertaking the direct collection of payments on a loan from the borrower or the right to undertake direct collection of payments on a loan from the borrower.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.2(17A,535B) Application for license.**

**18.2(1)** Application for a license to operate as a mortgage banker, mortgage broker, or closing agent shall be submitted to the administrator through the NMLS&R, and all requested information shall be provided on or with the application form. The administrator may consider an application or registration withdrawn if it does not contain all of the information required and the information is not submitted to the administrator within 30 days after the administrator requests the information.

**18.2(2)** The license application shall be accompanied by a fee of \$500 plus \$40 per additional branch location. The \$500 fee is not subject to refund. The applicant shall also pay any additional fees required by the NMLS&R including but not limited to the following: system processing fees, background check fees, and credit background check fees.

**18.2(3)** If any information changes after the filing of the initial application, the applicant shall provide updated information to the administrator in writing within 10 calendar days of the change. Failure to provide updated information when a change has occurred may result in denial of the application.

**18.2(4)** The administrator shall approve or deny a license application in accordance with the provisions of 2009 Iowa Code Supplement section 535B.5 as amended by 2010 Iowa Acts, Senate File 2348, section 5. A person shall not be eligible for licensing as a mortgage banker or mortgage broker

unless all mortgage loan originators who are employed by, under contract with, or exclusive agents of the person have successfully completed the licensing requirements of Iowa Code chapter 535D.

**18.2(5)** An applicant for a mortgage banker or mortgage broker license must file with the administrator a bond complying with the provisions of 2009 Iowa Code Supplement section 535B.9 as amended by 2010 Iowa Acts, Senate File 2348, section 7. The bond amount required to be filed and maintained by the applicant shall be set and adjusted as necessary annually in accordance with the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, underwritten, and serviced, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

**18.2(6)** An applicant for a closing agent license must file with the administrator a bond in the amount of \$25,000 which complies with the provisions of 2009 Iowa Code Supplement section 535B.9 as amended by 2010 Iowa Acts, Senate File 2348, section 7.

**18.2(7)** Licenses expire on the next December 31 after issuance. However, licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2008, would not expire until December 31, 2009.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.3(17A,535B) Renewal of license.**

**18.3(1)** To remain authorized to act as a mortgage banker, mortgage broker, or closing agent, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before expiration is not authorized to act as a mortgage banker, mortgage broker, or closing agent in Iowa after the expiration date.

**18.3(2)** Application to renew a license shall be submitted to the administrator before December 1 of the year of expiration through the NMLS&R. All requested information shall be provided to the administrator as directed by the NMLS&R. Applications for renewal of a license to transact business solely as a mortgage broker or closing agent must be accompanied by a fee of \$200. Applications for renewal of a license to transact business as a mortgage banker must be accompanied by a fee of \$400. In addition, the mortgage banker or mortgage broker licensee shall pay a branch office renewal fee of \$40 per branch. The administrator may assess late fees of up to \$10 per day for applications submitted after December 1.

**18.3(3)** The administrator shall grant an application to renew a license if:

- a. The administrator receives the application by December 1, accompanied by the appropriate renewal fee, or the administrator receives the application after December 1 but before January 1 and it is accompanied by the appropriate renewal fee and the appropriate late fee;
- b. The application is fully completed with all necessary information; and
- c. The application does not reveal grounds to deny a license.

**18.3(4)** A renewal application received by the administrator after December 31 may, at the discretion of the administrator, be rejected for processing or may be treated as a new application for a license. A licensee who fails to renew a license before the expiration date is not authorized to act as a mortgage banker, mortgage broker, or closing agent in Iowa after the expiration date.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.4(17A,535B) Individual registration requirements.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.5(17A,535B) Renewal of individual registration.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.6(17A,535B) Unattached status of individual registrant.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.7(17A,535B) Notice of significant events.** A licensee shall notify the administrator immediately and in writing within five business days of the occurrence of any of the following events.

**18.7(1)** The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection.

**18.7(2)** A prosecuting authority files criminal charges against the licensee or any of a licensee's officers, directors, principal stockholders, or affiliates.

**18.7(3)** Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

**18.7(4)** The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, mortgage loan originators, employees, or affiliates.

**18.7(5)** The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller/servicer.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

**187—18.8(17A,535B) Changes in the licensee's business; fees.**

**18.8(1)** No mortgage banker or mortgage broker licensee shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B under any name other than that stated on the license.

**18.8(2)** A licensee shall notify the administrator through the NMLS&R of a change in the location, the addition, or the closing of any office prior to the change, addition, or closure.

**18.8(3)** A mortgage banker or mortgage broker licensee shall maintain on file with the administrator, through the NMLS&R, a list of all mortgage loan originators who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay any fees assessed by the NMLS&R to add a mortgage loan originator to the licensee's list in the NMLS&R.

**18.8(4)** When a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a mortgage banker or mortgage broker licensee, the licensee shall notify the administrator, through the NMLS&R, within five business days. The notification shall include the reasons for the termination of the mortgage loan originator's employment, contract, or agency.

**18.8(5)** A mortgage banker or mortgage broker licensee shall notify the administrator through the NMLS&R of the addition of any mortgage loan originator, owner, officer, partner, or director within five business days of addition.

**18.8(6)** Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

**18.8(7)** NMLS&R system processing fees. In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS&R attributed to the licensee's record in the NMLS&R system including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.9(17A,535B) Administrative fees.**

**18.9(1)** *Examination and investigation late fees.* A licensee shall pay the administrator the total charge for an examination or investigation within 30 days after the administrator has requested payment. If a licensee fails to pay an examination or investigation fee by the due date, the administrator may assess an additional penalty of 5 percent of the amount of the fee for each day after the due date.

**18.9(2)** *Late fees for failing to respond.* In the process of administering this chapter, the administrator may require a person to provide responses to formal orders, examinations, or complaint

inquiries. If a person fails to respond within 30 days of the request, the administrator may assess a penalty of \$10 per day after the initial 30 days.

**18.9(3) License determination letters.** A person who requests written confirmation from the administrator that a license is not required shall submit a fee of \$100 with the written request.

**18.9(4) Required financial statements.** A licensee who fails to file with the administrator the financial statements required under Iowa Code section 535B.10(1) within 120 days after the end of a licensee's fiscal year shall be subject to a late penalty of \$100 for each day the financial statements are delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The administrator may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

**18.9(5) Duplicate license.** The licensee shall pay a fee of \$25 for each duplicate of an original license issued.

**187—18.10(17A,535B) Continuing education.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.11(17A,535B) Administrative requirements for courses.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.12(17A,535B) Standards for approval of courses of instruction.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.13(17A,535B) Standards for approval of live classroom courses.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.14(17A,535B) Standards for approval of distance education courses.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.15(17A,535B) Standards for approval of paper home-study courses.** Rescinded IAB 10/21/09, effective 1/1/10.

**187—18.16(17A,535B) Licensee records.**

**18.16(1) General record requirements.** A licensee must keep records that allow the administrator to determine the licensee's compliance with relevant statutes and regulations.

- a. The licensee may keep the records as a hard copy or in an electronic equivalent.
- b. The licensee shall keep records for at least 36 months from the date of the final transaction with the borrower or a party in a real estate transaction.
- c. The licensee shall maintain all books and records in good order and shall produce books and records for the administrator upon request. Failure to produce such books and records within 30 days of the administrator's request may be grounds for disciplinary action against the licensee.
- d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring this requirement is met.

e. Effective January 1, 2012, mortgage bankers and mortgage brokers shall have the capability to provide information on the characteristics of loan originations as described in subrule 18.16(11) in an electronic format prescribed by the administrator within 30 days of:

- (1) The end of each calendar quarter or some other regular interval determined by the administrator;
- or
- (2) Notice from the administrator in the case of an examination.

**18.16(2) Required records.**

- a. A mortgage broker shall keep an index, application log, and application files.
- b. A mortgage banker shall keep an index, application log, application files, loan register, and loan files. If the mortgage banker also services loans, the mortgage banker must also keep account ledgers.
- c. A mortgage banker who only services loans needs to keep only an index, a loan register, loan files, and account ledgers.

*d.* A closing agent shall keep the general business records outlined in subrule 18.16(9). The general business records are records relating to the closing agent's general business and do not include records relating to individual customer files. A closing agent shall also keep the following records relating to individual files:

- (1) A closing register containing the information outlined in subrule 18.22(5); and
- (2) A closing file containing the information outlined in subrule 18.22(6).

**18.16(3) *Index.*** All mortgage banker and mortgage broker records shall be accessible by the borrower's name (including the name of any endorser, comaker, or surety who is indebted to the lender) and account number.

**18.16(4) *Application log.*** A mortgage banker or mortgage broker licensee shall maintain an application log. The application log is a chronological list of applications received. The application log shall include the name of the applicant, date the application was completed, the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS&R identification number assigned to each, notes for action taken on applications (such as "approved," "denied," or "withdrawn"), and date of action. For approved applications, the application log shall show the date the loan closed and the name of the lender. For purposes of these rules, information from an applicant becomes an application when the licensee obtains the name and social security number of the applicant.

**18.16(5) *Loan register.*** A mortgage banker or mortgage broker licensee shall maintain a loan register. The loan register shall include the following information for every loan that is made: the date of the transaction, the name of the borrower, the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS&R identification number assigned to each, and the amount financed. The register shall be kept chronologically in the order the loans closed. The loan register may be combined with the application log.

**18.16(6) *Application file.*** A mortgage banker or mortgage broker licensee shall maintain an application file for each application received. The application file shall contain copies of the application and any required disclosures. A copy of any adverse action taken on the application, including any documentation supporting that action such as an appraisal report or credit report, shall also be placed in the application file. The application file shall also contain the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS&R identification number assigned to each.

**18.16(7) *Loan file.*** A mortgage banker or mortgage broker licensee shall maintain a loan file for each loan made. The loan file consists of the application file, the appraisal report, underwriting verifications, the closing file described in subrule 18.22(6) including other supporting documentation, and documents from the loan closing. These documents include: note, mortgage, all truth-in-lending disclosures, and all Real Estate Settlement Procedures Act disclosures. The loan file shall also contain the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS&R identification number assigned to each.

**18.16(8) *Account ledger.*** A mortgage banker licensee shall maintain an account ledger for each loan that is serviced, which shall include the following information:

*a.* The name and address of the borrower, loan number, loan date, payment terms, maturity date, principal amount of loan, amount financed, total of payments, property listed as security, and distribution of the loan proceeds.

*b.* The transaction history. Payments shall be posted to the account ledger effective the date payments were received. Payment entries will show the date payment was received, the total amount of the payment, and a description of how the payment was applied to the borrower's account (amount applied to principal, interest, escrow, late fees, or additional written description). Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

*c.* The remaining balances due from the borrower, including principal, escrow, late fees, and other charges.

*d.* Any change to the interest rate and the effective date of that change.

*e.* Full descriptions of payments made outside the normal course of business, for example, payments made by the sale of security, insurance claim, or endorser. For any payments made by death claims on credit insurance, the date of death shall be noted in the account ledger.

*f.* When a loan is prepaid in full, the dates and amounts of any rebates made to the borrower including escrow rebates and the refunds of unearned insurance premiums.

**18.16(9) *General business records.*** A licensee must keep the following general business records for at least 36 months:

*a.* All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the mortgage or real estate closing business of the licensee.

*b.* Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant.

*c.* Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a licensee in connection with the conduct of the mortgage lending or real estate closing business.

*d.* All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 535B.

*e.* Copies of all contractual arrangements or understandings with third parties in any way relating to the provision of mortgage lending services or real estate closing services (including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, any investor contracts, any employment agreements, and any noncompete agreements).

*f.* Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar functions performed by any third party, including but not limited to the administrator or any other regulatory or supervisory authority.

*g.* Copies of all advertisements and solicitations concerning mortgage business directed at Iowa residents, including advertisements and solicitations on the Internet or by other electronic means, in the format (e.g., recorded sound, video, print) in which the advertisements and solicitations were published or distributed.

**18.16(10) *Disposal of records.*** If the licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1) “*a.*” The owners and directors of licensees and former licensees are responsible for ensuring this requirement is met.

**18.16(11) *Loan records required to be maintained electronically.***

*a.* Effective January 1, 2012, mortgage bankers and mortgage brokers shall maintain the following records electronically in a format prescribed by the administrator:

(1) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, the mortgage broker (if applicable), and the lender for the loan.

(2) Information sufficient to enable a computation of key items in the federal truth-in-lending disclosures, including the annual percentage rate, the finance charge, and a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures.

(3) Information included in the “good faith estimate” (GFE) disclosure required under the federal Real Estate Settlement Procedures Act, including the rate, the date of any interest rate lock, and an itemization of settlement charges and all broker compensation.

(4) Information included in the final HUD-1 Settlement Statement.

(5) Information related to the terms of each loan, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, the duration of prepayment penalty, and the maximum amount of penalty).

(6) Information typically used in underwriting, including the appraised value of the property, the sales price of the property (if a purchase loan), each borrower's income, the monthly payment amount, the housing debt-to-income ratio, the total debt-to-income ratio, and the credit score of each borrower.

(7) Information included in a Loan Application Register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

*b.* Mortgage brokers shall provide information identified in paragraph 18.16(11)“*a*” unless such information is not prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an electronic format.

*c.* The administrator shall permit mortgage bankers and mortgage brokers to utilize compatible third-party software to provide information required under this subrule.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.17(17A,535B) Mortgage call reports.** Each mortgage banker and mortgage broker licensee shall submit to the NMLS&R reports of condition, which shall be in such form and shall contain such information as the NMLS&R shall require. For each day after the NMLS&R-established due date that the report is not received, the administrator may assess late fees of \$10 per day.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.18(17A,535B) Advertising and representations to potential borrowers.**

**18.18(1)** Any advertisement of mortgage loans which are offered by or through a mortgage banker or mortgage broker licensee shall conform to the following requirements:

*a.* An advertisement shall be in compliance with Truth-in-Lending, Regulation Z, and any other applicable state and federal laws and regulations.

*b.* An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

*c.* An advertisement shall not make any statement or fail to make any statement the result of which shall present a misleading or deceptive impression to consumers.

*d.* An advertisement shall clearly show the licensee's unique NMLS&R identification number.

**18.18(2)** A licensee receiving a verbal or written inquiry about the licensee's services shall respond accurately to any questions about the scope and nature of such services and any costs.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.19(17A,535B) Complaints and investigations.**

**18.19(1)** The administrator may, at any time and as often as the administrator deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

**18.19(2)** The administrator may investigate complaints or alleged violations about any licensee.

**18.19(3)** The following shall constitute a complaint or alleged violation:

*a.* A written complaint received from a consumer, member of the public, employee business affiliate, or other governmental agency.

*b.* Notice to the administrator from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

*c.* Notice to the administrator from any source that the licensee has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar offense, in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.20(17A,535B) Disciplinary action.**

**18.20(1)** The administrator has authority pursuant to Iowa Code chapters 535B and 17A to impose discipline for violations of Iowa Code chapter 535B and the rules promulgated thereunder.

**18.20(2)** Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in Iowa Code section 535B.7 when the administrator finds any of the following:

*a.* The licensee has violated a provision of Iowa Code chapter 535B or a rule adopted under Iowa Code chapter 535B or any other state or federal law applicable to the conduct of the licensee's business, including but not limited to Iowa Code chapters 535 and 535A.

*b.* A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the administrator to refuse to issue the original license.

*c.* The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

*d.* The licensee has violated an order of the administrator.

*e.* The licensee fails to fully cooperate with an examination or investigation, including failure to respond to an administrator inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's last-known address on file with the administrator.

*f.* The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.

*g.* The licensee continues to operate as a mortgage banker, mortgage broker, or closing agent without an active and current license.

*h.* and *i.* Reserved.

*j.* The licensee fails to notify the administrator within five days of the occurrence of one of the significant events set forth in rule 187—18.7(17A,535B).

*k.* Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to act as a mortgage banker, mortgage broker, or closing agent under the other state's or jurisdiction's law.

*l.* The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

**18.20(3)** A licensee may surrender a license by delivering to the administrator a written notice of surrender.

**18.20(4)** The administrator may issue a cease and desist order ordering a person to cease and desist from violating any provision of Iowa Code chapter 535B or rules adopted thereunder. The process for issuing a cease and desist order is described in Iowa Code section 535B.13.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

### **187—18.21(17A,535B) Trust fund accounting and internal controls.**

**18.21(1)** A closing agent shall establish and maintain a separate subsidiary ledger for each real estate transaction for which the closing agent performs real estate closing services.

**18.21(2)** A closing agent shall prepare a trial balance for each trust account and each subsidiary ledger at least once each calendar month.

**18.21(3)** A closing agent shall perform a three-way reconciliation of bank balance, book balance, and trust account trial balance for each bank trust account at least once each calendar month. A member of the closing agent's management team shall review and approve the reconciliation at least once each calendar month.

**18.21(4)** A closing agent shall design accounting processes with the appropriate level of internal controls and management oversight. The process shall include an appropriate segregation of duties. It is recommended that trust account reconciliations be prepared by a person other than a person who records receipts or makes deposits to the trust account. A closing agent may use an outside accountant to perform reconciliations.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

### **187—18.22(17A,535B) Closing standards.**

**18.22(1)** A closing agent shall read and comply with all closing instructions from the parties to the transaction.

**18.22(2)** A closing agent shall disburse or deliver funds only in accordance with closing instructions from the lender, the attorney's title opinion or title commitment, and the real estate purchase agreement, when applicable. All disbursements shall agree to the final signed settlement statement.



**18.22(3)** A closing agent shall obtain written payoff statements for any loan being paid off as part of the real estate transaction and shall make all loan payoffs as soon after the closing as is practical, but in no event more than two business days after the closing, or within one business day after the rescission period ends in the case of a refinance transaction. For the purposes of this rule, placing the loan payoffs with a delivery service for overnight delivery shall meet the requirements of this subrule.

**18.22(4)** A closing agent shall be responsible for ensuring that all documents for the real estate transaction that require recording are recorded with the appropriate county recorder's office in a timely manner, but in no event more than five business days after the date of the transaction.

**18.22(5)** A closing agent shall maintain a closing register and a closing index. A closing register is a chronological list of real estate closings. The closing register shall include for each closing the date of the transaction, the name of the buyer or borrower, the name of the seller, the name of the lender and the mortgage loan originator, and the property address, as applicable. A closing index shall be maintained so that all records are accessible by the names of the parties to the transaction (including the name of the buyer or borrower, the name of the seller, and the name of the mortgage loan originator) and file number. A searchable database containing the information required by this subrule satisfies the requirements of this subrule.

**18.22(6)** A closing agent shall maintain a closing file for each real estate transaction for which the closing agent performed real estate closing services. The closing file shall include, at a minimum, the following records:

*a.* An accounting ledger or disbursement sheet that details all receipts and disbursements with date, transaction type, check number, payee, amount, and the file's ending balance. All ledger or disbursement sheets shall balance zero after the transaction is completed. If any balance remains, the date, the reason for the balance, and to whom the balance belongs shall be clearly documented in the file.

*b.* A signed settlement statement that totals properly and is supported by written instructions for all amounts (such as closing instructions, invoices, or written payoffs). If the settlement requires changes, a copy of the new settlement statement with changes clearly documented shall be maintained in the file.

*c.* A copy of the closing instructions from the lender and other parties to the transaction.

*d.* A copy of the signed real estate contract, if applicable.

*e.* Detailed records of the individuals present at each closing, including copies of photo identification, and specifying where and when each closing is held.

*f.* Properly executed affidavits, where required.

*g.* Evidence that the real estate transaction documents were filed with the county recorder.  
[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

#### **187—18.23(17A,535B) Employees of closing agents.**

**18.23(1)** A closing agent shall exercise diligence in hiring practices, including policies regarding background investigations. A closing agent shall conduct a background investigation and credit check for each employee responsible for handling funds.

**18.23(2)** A closing agent shall provide appropriate training to employees on real estate closing matters, including trust account administration, real estate closing procedures, and fraud prevention.  
[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.24(17A,535B) Reporting obligation.** If a closing agent detects defalcation regarding the closing agent's trust account funds, the closing agent must file the following notice with the division of banking within three days of discovering the defalcation. "We have detected circumstances regarding our trust account funds that may warrant an investigation by the banking division. The amount of funds involved is believed to be \$ \_\_\_\_\_."

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

**187—18.25(17A,535B) Real estate brokers.** For the purposes of applying the exemption in Iowa Code section 535B.2(6), a real estate broker performing real estate closing services shall be deemed to be engaged in practice as a real estate broker only when performing real estate closing services on a transaction in which the broker's brokerage represents one of the parties to the transaction and the

closing is being administered through an account regulated by the real estate commission pursuant to Iowa Code chapter 543B.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

These rules are intended to implement Iowa Code chapter 535B and 2010 Iowa Acts, Senate File 2348.

[Filed 5/3/06, Notice 3/29/06—published 5/24/06, effective 7/1/06]

[Filed 10/29/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]

[Filed ARC 8238B (Notice ARC 8066B, IAB 8/26/09), IAB 10/21/09, effective 1/1/10]

[Filed Emergency ARC 9593B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9688B (Notice ARC 9592B, IAB 6/29/11), IAB 8/24/11, effective 9/28/11]