

**265—9.11 (16) Claims.**

**9.11(1) Definitions.** The following words and phrases, when used in this rule, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“*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 in accordance with the provisions of this rule.

“*Party*” means a participant, independent closer, or any other person or entity that has a contractual relationship with the division to provide coverage or services for which a claim may be brought against the division.

**9.11(2) 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 in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed 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 party shall notify the division by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods.

*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, 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.

**9.11(3) 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, the manual, staff supplements, and any other written or oral instructions or requirements given by the division that the party 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 party 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 party shall reimburse the division for a claim loss when the division determines, in accordance with 9.11(3)“*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 title search and 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 of title, survey, affidavit, or other source of title information;
- (4) Errors made by the party 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 party upon a defective title; or
- (6) Failure of the party to follow these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division with respect to any other matters not included within 9.11(3)“*c*.”

*d.* Unless another rule, the Code of Iowa, the manual, a procedure, or a guideline 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 9.11(3)“*c*”(1), the division may demand reimbursement from the party if the party 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 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 9.11(3)“*c*”(2), the division may demand reimbursement from that party if the party 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 party under 9.11(3)“*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 title commitment or certificate.

1. The division may make full review of local county abstracting standards and bar title rules 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 of title or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed these rules, the manual, staff supplements, or any other written or oral instructions or requirements 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 of title 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 9.11(3)“c”(4), the division may demand reimbursement from the party if the party 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 party under 9.11(3)“c”(5), the division may demand reimbursement from the party 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 party under 9.11(3)“c”(6), the division may demand reimbursement from the party if the party failed to follow these rules, the manual, staff supplements, 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 party, the division shall state the basis of the reimbursement.

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

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