

265—9.6 (16) Title guaranty program.

9.6(1) Operation. The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty commitments and certificates by the division, by participating abstractors for the division pursuant to subrule 9.6(4), paragraph “c,” herein, or by participating attorneys pursuant to Iowa Code section 16.91(7).

9.6(2) Application for title guaranty commitments or certificates. The division may authorize entities engaged in the real estate industry to apply directly to the division staff, an independent closer, a participating attorney, or a participating abstractor for a title guaranty commitment or certificate. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry that the division may authorize to apply include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(1) “y,” and closing and escrow companies.

9.6(3) Participating attorneys. An attorney licensed to practice law in the state of Iowa may participate in the title guaranty program upon approval by the division director of an application submitted by the licensed attorney to the division and upon execution and acceptance by the division director of the attorney’s participation agreement.

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

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

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

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

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

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

9.6(4) Participating abstractors. An abstractor or abstracting concern may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an abstractor’s participation agreement.

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

b. Title plant exemption. Grandfathered attorneys and attorneys and abstractors who have received a waiver of the use of an up-to-date plant described in Iowa Code section 16.91(5) "a"(2), either personally or through persons under their supervision and control, shall be exempt from the requirement to own or lease a title plant. This exemption is a personal exemption of the individual participant, is not transferable, and terminates at such time as the participant ceases providing abstracting services or upon the death or incapacity of the participant.

c. Issuing title guaranty. Pursuant to a written contract with the division director, a participating abstractor may be authorized to issue a title guaranty commitment or certificate for the division when the participating attorney who prepares the opinion allows issuance by the participating abstractor. Written contractual approval by the division director for division issuance will be based upon the completion of a division request form by a participating abstractor and the attachment of all disclosures required by the division. A participating abstractor authorized to issue a title guaranty commitment or certificate must comply with the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The rights of the participating abstractor under the preceding sentence are not exclusive and are subject to the rights of the authority, the division, and other field issuers of the division to issue commitments or certificates and are further subject to the right of the division to appoint other field issuers. A participating abstractor's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to the written contract with the division.

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

9.6(5) Participation requirements.

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

(1) The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered.

(2) Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

b. Participation fees. A participant shall pay a participation fee set by resolution of the division board subject to the approval of the authority board.

(1) The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of participation fees at least 30 days prior to the date of the meeting at which the matter will be considered.

(2) Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.6(6) *Abstract of title.* All abstracts of title shall be prepared and conducted in compliance with division procedures as specified in the manual, staff supplements, and any other written or oral instructions or requirements given by the division that are in effect at the time of abstracting. A participating abstractor shall retain a written or electronic copy of each abstract of title prepared for a title guaranty certificate and shall provide such copy to the division upon request.

9.6(7) *Attorney title opinion.* All attorney title opinions shall be prepared and issued in compliance with division procedures as specified in the manual, staff supplements, and any other written or oral instructions or requirements given by the division that are in effect at the time of issuance. A participating attorney who is a field issuer may issue a commitment as the preliminary attorney title opinion and the certificate as the final attorney title opinion in compliance with division procedures. A written or electronic copy of each attorney title opinion shall be retained by a field issuer, and a copy thereof shall be provided to the division upon request.

9.6(8) *Closing protection letters.*

a. Issuance of closing protection letters. Division closers may be authorized to receive a closing protection letter approved by the division board when:

- (1) A division closer has completed division forms and procedures training,
- (2) The division director has approved the application, and
- (3) A division commitment is issued.

b. Application. Application for designation of division closer status shall be on forms provided by the division, and all requested information shall be provided with the application form. The division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the division within 30 days after the division requests the information. The application shall be accompanied by a fee to be set by the division board. The division director shall approve or deny the application within 90 days after the application has been accepted for processing and send written notice thereof to the applicant.

c. Guidelines. In determining whether to approve or deny an application for designation of division closer status, the division director may consider the following factors, including but not limited to:

- (1) The needs of the public and the needs of existing or potential customers of the applicant that are served by a designation of division closer status.
- (2) A history of operation and management of the applicant's business.
- (3) Character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- (4) Criminal background checks for felony or misdemeanor convictions of the applicant or the applicant's employees involving moral turpitude.
- (5) A record of defaulting by the applicant or the applicant's employees in the payment of moneys collected for others in this state or other states.
- (6) A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
- (7) The applicant's credit report, which is to be submitted directly to the division director at the expense of the applicant.
- (8) Other factors as determined by the division director to be relevant.

d. Investigation. The division director may conduct an investigation as deemed necessary. The division director may solicit, by whatever manner deemed appropriate, comments from other persons conducting closings, or from any other person or entity which may be affected by or have an interest in the pending application.

e. Revocation. The division director has discretion to revoke a division closer's status for reasons including but not limited to the following:

- (1) When the financial condition of the division closer deteriorates.
- (2) When the division director determines that the division closer's activities are being conducted unlawfully or in an unsafe or unsound manner.

f. Authority of division closer. A division closer is authorized to conduct division closings only for the purposes and in the manner set forth in the division closer's agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other instructions or requirements given by the division and in no other manner whatsoever. The authority of the division closer under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other division closers to transact the business of guaranteeing titles to real estate in Iowa and is further subject to the right of the division to appoint other division closers.

A division closer shall obtain the written authorization of a member of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under 9.6(8) "f" is not obtained through the act or omission of the division closer, the division closer shall be strictly liable to the division for any resulting loss or damage.

g. Division escrow accounts. The division board shall approve procedures and requirements for the maintenance of division escrow accounts. Division closers shall comply with the rules and requirements set by the division board with respect to the procedures, format, and style for maintaining the division escrow accounts. The division board may require the division closer to provide an irrevocable letter of direction to the institution at which each division 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.

9.6(9) General provisions.

a. Commitment and certificate amount limitations. A field issuer shall obtain the written authorization of a member of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this paragraph 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 or certificate.

b. Title/closing files and forms. A participant or independent closer shall maintain separate title, client and closing files or maintain client files in such a manner that information pertaining to activities of the participant or the independent closer is readily available to the division. A participant or independent closer shall maintain files for a period of ten years after the effective date of the commitment and certificate or certificates.

(1) The division will provide forms to a participant or independent closer for use in acting for the division. A participant or independent closer may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division. In addition, the participant or independent closer shall:

1. Return the original of any canceled certificate to the division, and
2. Not transfer or attempt to transfer unissued commitments or certificates to another participant, independent closer, or other person or entity unless authorized in writing by the division.

(2) If a participant or independent closer fails to comply with the requirements of 9.6(9) "b," in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participant or independent closer until the participant or independent closer complies with the requirements of 9.6(9) "b" to the satisfaction of the division.

(3) The participant or independent closer shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant or independent closer to account for any form supplied by the division, or the failure of the participant or independent closer to comply with the requirements of 9.6(9) "b."

c. Training. The division director may require a participant, an independent closer, and the participant's and independent closer's staff to attend training sessions or continuing education seminars as deemed necessary by the division director in order to ensure compliance with division requirements and procedures.

d. Office audits. The division may, with or without notice to a participant or an independent closer, audit the participant or independent closer at the participant's or independent closer's office. This audit may include, but need not be limited to, a review of the participant's or independent closer's commitment and certificate issuance procedures, an audit of serialized forms, an audit and test of title plants and tract indices, an audit of closing operation and closing procedures, an audit of the division escrow account(s), and verification of the participant's or independent closer's compliance with division rules, participation agreements, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.

e. Interest in property. No participant or independent closer shall prepare an abstract of title, issue attorney title opinions, commitments, or certificates, or conduct a closing upon property in which the participant or independent closer has an interest without prior authorization of the division.

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